Supreme Court, U.S.

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NO.

IN THE
Supreme Court of the United States
October Term, 1994

Marcia S. French

Petitioner

v

Ronald L. King, Director of Caroline County, Virginia Social Services, et al.

Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI

Law Offices of J. Benjamin Dick*
421 Park Street, #2
Charlottesville, VA 22901
804-977-6607
V.S.B. # 018338
Attorney for Petitioner

*Counsel of Record

QUESTIONS PRESENTED

1) In cases of individual citizens, alleging unconstitutional motives of state government actors who perpetrate a fraud, deceit, fabrications, lies, and even perjury, as well as, their deliberate, malicious, willful acts and omissions, to deprive citizens of their constitutional rights, and who move for summary judgment on the defense of qualified immunity to shut down discovery, should not this Court clarify Harlow v. Fitzgerald 457 U.S. 800 (1982), and Anderson v. Creighton 483 U.S. 635 (1987) to (a) allow full discovery in preparation of trial to provide proof of this sort of case of egregious wrong-doing, and (b) to eliminate a conflict in the United States Circuit Courts of Appeals who differ on the extent of discovery when the defense of qualified immunity is used to prevent discovery that

would prove unconstitutional motive, fraud and deceit?

2) For the same reason, should not this Court define what the phrase "clearly established law" means to assist the Courts of the United States to determine when qualified immunity applies in such cases and the extent of discovery to be allowed.

3) Was summary judgment in any event appropriate for Mrs. French's case particularly as to granting summary judgment based on qualified immunity or otherwise when her Complaint was sufficient on its face to show egregious wrong-doing and denials of due process?

4) Do not the District Courts of the United States have an absolute duty to make inquiry and take evidence to decide a FRCP 60(b) motion asserting newly discovered evidence not made available or obtainable by

due diligence prior to the FRCP 60(b) motion, particularly when the movant asserts and provides credible evidence of a fraud on the court and acts of perjury and fabrications as well as credible evidence of a tainted state grievance panel?

PARTIES TO THE PROCEEDINGS

The parties are as follows:

MARCIA S. FRENCH is the Plaintiff below and Petitioner.

The defendants below and respondents are RONALD L. KING, individually and in his official capacity, as Director of Caroline County Department of Social Services, BLANCHE A. BADILLO, personally, Renee' Woods, personally, THE CAROLINE COUNTY GOVERNMENT, KENNETH DAVIS, CHAIRMAN of the Board of Social Services, CALVIN B. TAYLOR, Board Member, IRENE FIELDS, Board Member, PATRICIA MURRAY, Board Member, ELLEN CARTER, Board Member, WILLIAM JETER, Board Member. JOHN DOE, for unknown parties who promoted Mrs. French's constitutional violations and fraud is also named.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner, Marcia S. French, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on December 23, 1993.

OPINIONS BELOW

The "unpublished," per curiam, opinion of the United States Court of Appeals for the Fourth Circuit is set out in the appendix at pages 5 through 14. The published memorandum of the District Judge is set out in the Appendix at pages 28 through 45.

GROUNDS FOR JURISDICTION

The judgment sought to be reviewed is dated and was entered December 23, 1993 by the United States Court of Appeals for the Fourth

Circuit. (App. 6.)

Rehearing was denied by order filed January 19, 1994. (App. 3-4.)

Title 28 United States Code, Section 1254(1) confers jurisdiction to review the judgment by writ of certiorari.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

UNITED STATES CONSTITUTION
AMENDMENT 14

Section 1. Citizens of the United States. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. 1331
Federal Question

The district courts shall have original jurisdiction of all civil actions arising

under the Constitution, laws, or treaties of the United States.

Title 28 U.S.C. 1343
Civil Rights and Elective Franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance,

regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Title 28 U.S.C. § 2201
Creation of Remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 [26 USCS § 7428], any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not

further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

UNITED STATES CODE SERVICE
42 U.S.C.S. §1983

Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof the the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be proper proceeding for redress.

. . .

STATEMENT OF THE CASE

Marcia S. French, age 62, was terminated from her sixteen year's employment as a vested, non-probationary, permanent state employee of Virginia on April 17, 1992.[1] She worked as an eligibility caseworker for the Caroline County, Virginia Department of Social Services processing Medicaid benefits. On the date of her termination, she had accumulated an impeccable record of public service in her Department and in her small community of 20,000 persons. Her reputation and character in her community were unimpeachable. She lived with her husband who commanded the United States Army Post, A.P. Hill, until his

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[1]Mrs. French worked a Medicaid file of Sarah Madison from 1990 to August 1991 when it was taken over by Renee Woods, a co-worker, at Mr. King's order, her Director. The Sarah Madison file became the focal point used by the Respondents to terminate Mrs. French as herein described.

retirement within the community.

On termination, Mrs. French had attained the status of Senior Eligibility Worker and had gained merit pay increases and highest ratings. (App. 140-145.) In her federal complaint (App. 61-153) asserting violations of federally protected rights, violations of state codified statutory, regulatory, and administrative procedures, created by a state-mandated employee grievance process, based on a state enabling statute (Va. Code 2.1 - 114:5:1 (et seq.)), Mrs. French claimed her fundamental and guaranteed procedure and substantive due process rights under the Fourteenth Amendment and laws of Congress were violated. Due to a tainted due process and no fair hearing, she lost her liberty interest, her job and good name in her community, as a result of the singular, joint, and cumulative fraudulent and malicious acts and omissions of

the state respondents.

She alleged they tainted her entire pre-deprivation and post-deprivation state remedies, depriving her of any fundamentally fair process to vindicate and any opportunity to restore her proprietary interests (job and benefits) and good name in her community.

She asserted that the process given to her by the respondents was deliberately tainted by certain respondents' fraud, deceit, malice, unlawfulness, slander, trick, and artifice. These wrongful acts were then ratified and adopted by the County governmental respondents. On a post-judgment Rule 60(b) motion after the District Court dismissed the Complaint based on Respondents' summary judgment motion, she asserted that <u>even</u> the state statutory requirement of an "impartial panel" (Va. Code § 2.1-114.5:1)*

* App. 172

was also proven to be tainted by a disclosure of biased panel members, by perjury, and by a perpetrated fraud, and deceit that had even reached a fraud on the Court.

She submitted an affidavit by her nominated panel member, Edward N. Resio (App. 165-169) who disclosed under oath that his fellow panel members were prejudiced and predisposed against Mrs. French.

Mrs. French pointed to Director King's false affidavit (App. 151-153) that the Board had not "voted" to fire her. King swore under oath they voted to fire her. This was false. She had pointed out the affidavit of Colonel French (App. 161-162) which disclosed Renee' Woods's admission of fraud. The District Court denied the motion. (App. 19-23.)

Prior to her FRCP Rule 60(b) motion and a FRCP 59(e) motion, post-judgment, both denied (App. 19-27 as to order and

memorandum), Mrs. French on filing her federal complaint in September 1992 saw the District Court deny the Respondents' Motion to Dismiss entered December 8, 1992 after oral argument before Thanksgiving. (App. 46-47, Order of December 8, 1992.) The District Court had entered on October 29, 1992 and November 10, 1992 pre-trial and discovery orders (App. 48-60) which the Respondents largely ignored. Mrs. French continued to meet utter resistance and dilatory responses by respondents to her requested discovery. She responded with two motions to compel.

The District Court granted the motions to compel from the bench in its pre-Thanksgiving hearing November 1992 on oral argument. The court directed that depositions would begin <u>immediately</u> at the end of November 1992 in the Court's jury room so to resolve any disputes over discovery that might occur

between the Petitioner and Respondents. Depositions were immediately conducted three days before Christmas 1992 and then continued January 4, 1993. (On January 4, 1993, the District Court abruptly announced it was granting summary judgment based on qualified immunity and discovery should stop. Mrs. French was not given a chance to present her discovery as it was being transcribed.)

In November 1992, at the same instance of ordered discovery, Mrs. French asked that the state panel process be stayed because of the tainted process and to concentrate on her federal complaint. The District Court refused. At the same instance, by the collective efforts of the respondents, Mr. King and Mrs. Badillo, who had begun in early June 1992 (App. 138 to 139) to accuse Mrs. French of crimes, they promoted a spurious State Police criminal investigation of Mrs.

French alleging welfare fraud. These charges were also falsely made. Mrs. French had to fight this investigation at the same time of her federal complaint discovery process and her on-going state panel process.

These two Respondents, Mrs. Badillo and Mr. King, it was disclosed in the discovery process, delivered to the State Police a typed statement which they had prepared, which was falsely made attributable to a co-worker, Renee Woods, who purportedly in an unsigned, undated, and unsworn statement, purported to proclaim that "Mrs. French stated [to Renee Woods] she had committed fraud and would probably lose her job for trying to help the family." (The "family" was a certain Sarah Madison, Medicaid recipient.)[2]

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[2]Mrs. French was accused of making Sarah Madison eligible for long-term nursing care when according to Mrs. Badillo, Mrs. Madison was not eligible. Director King and Mrs. French's supervisor, Cynthia Whittaker, as

The latter portion of the statement attributable to Renee' Woods as her statement, discovery and the panel process uncovered was an entirely <u>false</u> statement of fact, purposely inserted by Mrs. Badillo to entirely taint Mrs. French's process and to assure her firing. Renee Woods, a deponent under oath, pointed her finger in discovery to Mrs. Badillo as the sole person inserting that portion of the false statement of fact. Renee Woods under oath said she never made that part of the statement nor did Mrs. French. (This same part of the false statement (App. 179) was used in the grievance process and the State Police investigation. A state special prosecutor later made a finding of insufficient evidence to prosecute or indict

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superiors, had approved the long-term nursing care in 1990 and 1991 on Mrs. French's recommendation. Mrs. Badillo, a new worker, sought to contradict the 1990-1991 prior approvals.

Mrs. French as memorialized by a Judge of a Caroline County Circuit Court Order (App. 175-178)).

These cumulative falsified events, including the spurious criminal charges, effected on Mrs. French, a fraud and deceit, were also pre-disclosed purposely by Mr. King, Mrs. Badillo and a Board member to the Board of Social Services deciding her appeal at Step Three in her earlier state grievance process to garner a biased pre-determination from the Board to support the firing. The Board of Social Services were told secretly Mrs. French would be indicted, so announced by the County Attorney and others involved. Board members in pre-trial depositions, readily admitting that they had been told of these spurious criminal charges by Mr. King, the County Attorney, their attorney, and others, fully admitted that they, regardless, predisposed,

sat in judgment of Mrs. French on the trumped-up charge at Step Three of her grievance process. Step Three could have exonerated Mrs. French if she had access to documents, records, and her required 15-day prior notice before termination published in the state personnel manual.[3] (App. 173-174.)

It was further uncovered in discovery by the deposition of a former co-worker, Doris McLean, the ill-will and malicious motives of Mrs. Badillo. (Mrs. McLean had also sued Mr. King for promoting a false charge of fraud against her in dismissing her from Caroline County Social Services. King settled out of Court. Mrs. McLean regained her job and settlement money. She testified on behalf of Mrs. French.) Mrs. McLean in deposition revealed the bad faith and malicious motive of

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[3]Documents and witnesses were denied to Mrs. French. See App. 102-103.

Mrs. Badillo, a part-time probationary employee on loan from another County's social services agency and who was hired by Mr. King. Mrs. Badillo announced to Mrs. McLean that she sought to become a full-time employee in Caroline County Social Services. Mrs. Badillo to do so would look to eliminate Mrs. French's job to gain funding for her own full-time position as a Medicaid Supervisor. In this regard, Mr. King, who was new and who didn't get along with Mrs. French, assisted Mrs. Badillo.

In a confederacy, Mr. King had made Mrs. Badillo a part-time employee, and then made her supervisor over Mrs. French and Renee' Woods. Within a few months, from November 1991 to April 1992, Mrs. Badillo as supervisor made life miserable for Mrs. French and co-worker Renee Woods. In August 1991 Mrs. French was demoted from Senior Eligibility

Worker and replaced by Renee' Woods. Renee' Woods took over the Sarah Madison file in August, 1991. Then came Mrs. Badillo.

Badillo began succeeding in her plan, severely criticizing Renee' Woods on her work to the point that Renee' Woods became physically ill. Renee' Woods being pressured daily with an impossible case load revealed in early April 1992 to Mrs. Badillo that she had not reviewed according to schedule the Medicaid file of Sarah Madison, a Medicaid recipient, being an 85-year-old, nearly comatose, and organic brain damaged female residing in a nearby nursing home. Sarah Madison's residency was paid for by Medicaid benefits for long-term nursing care. Mrs. Madison owned some insignificant real property with a dilapidated dwelling appraised by the County government under $8,500.00. Earlier in 1990-1991, King and Supervisor Whittaker had

approved her nursing care on French's recommendation, the property being exempted under state law.

Mrs. Badillo, noting to Renee Woods the property should have been immediately sold, Mrs. Badillo declared in her opinion to Renee' Woods that Madison was "ineligible" and French was wrong.

Mrs. Badillo seizing the moment, concluded on her own that Madison had been ineligible even when Mrs. French had worked the file in 1990 and 1991, before Ms. Woods took the file over in August 1991. Mrs. Badillo next called Mr. King in Renee' Woods's presence, as Woods testified in pre-trial depositions, and proclaimed triumphantly that they "finally had" French's job now, because French had erroneously made Mrs. Madison eligible. (Mrs. Badillo had proclaimed to Doris McLean in January 1992, revealed in

McLean's pre-trial discovery deposition, that she disliked Mrs. French and felt Mrs. French's work was incompetent. Mrs. Badillo announced to Mrs. McLean in January 1992 that she would become a full-time employee in Caroline County.) The motive of Mrs. Badillo was to succeed in this objective. This is where the plan of a fraud and deceit was born.

Mrs. Badillo then badgered Renee' Woods in April 1992 as to Madison's eligibility that if Renee' Woods did not cooperate with Mrs. Badillo and Mr. King on getting Mrs. French fired by saying French wrongly declared Mrs. Madison eligible (1990-1991) and told Woods to hide the file, Woods would also be accused of fraud and fired from her job for also keeping Mrs. Madison eligible by not reviewing the file. (It is critical for this Court to understand that <u>all of these revelations were forthcoming during the pendency of the pre-</u>

trial discovery order entered by the District Court and from the on-going panel process which the District Court had refused to stay. Emphasis added.)[4]

Colonel Harry French, Retired, Mrs. French's husband, saw Renee Woods in June 1992 come to his house. She admitted to him that she had had "words put into her mouth" by Mr. King and Mrs. Badillo so as to work a fraud on Mrs. French to take her job, and to get Mrs. Badillo a permanent job. Colonel French gave this revelation in affidavit form and it was duly submitted to the Court. (App. 151 to 161.) Other affidavits were submitted supporting Mrs. French's version including an affidavit by her former supervisor, Cynthia Whittaker, who approved Sarah Madison for long-term care as a supervisor and who noted

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[4]Colonel French's affidavit had already corroborated these facts. It was submitted prior to summary judgment. (App. 154-164.)

the Sarah Madison file had been purged since Renee' Woods had the file. Renee' Woods admitted the file had been purged also in discovery depositions which prevented Mrs. French from defending herself. Renee' Woods in depositions also admitted she and Mrs. Badillo had created "white lies" in order to divert Mrs. French from learning the truth of what was happening to her. (App. 170-171.)

As stated earlier, Mrs. French was proceeding under a lawful pre-trial discovery order after Respondents' motion to dismiss was denied by the District Court. She was fighting on three fronts, the pre-trial discovery order with which she sought to comply with all due diligence after winning her motions to compel; she fought the on-going spurious criminal allegations to a victory and a Virginia Circuit Court Order was entered. She proceeded with a tainted panel process

that proved not to be impartial, with one panel member accusing the other two of being predisposed.

Winning her motion to compel in late November 1992, she started conducting depositions. These depositions uncovered startling evidence that began to unravel the fraud and deceit perpetrated upon Mrs. French by Mrs. Badillo and Mr. King who wrongfully and unlawfully took her job and benefits of many years, and destroyed her name in her community.

Nevertheless, before this travesty and injustice could be fully uncovered and put before the District Court, suddenly on January 4, 1992, during a deposition, when a dispute arose over the respondents' failure to make proper disclosures on the granted motions to compel, and under the pre-trial discovery order, the District Court being requested on

January 4, 1993 to hear that dispute, the Court's Law Clerk abruptly announced that the Court sitting in Baltimore wanted the parties to know it would forthwith enter a summary judgment for the respondents based solely on qualified immunity. The Court suggested depositions cease to offset costs. Thus Mrs. French had no fair opportunity in the judicial proceedings to bring forth the continuing revelations being obtained demonstrating unconstitutional motives to deprive her of any fair and meaningful state grievance process.

It is also submitted that not only did Mrs. French suffer the sham and fraud described above, she was totally denied even her rights published by the Virginia Department of Social Services Personnel Manual, Volume 1A, Chapter C(4)(b), Page 80. (In pertinent part, App. 173-174.) This required that Mrs. French as a permanent or

restricted employee "must be notified in writing 15 calendar days prior to the date of release as to the specific reason for the dismissal." Mrs. French never received this 15-day notice.[5]

Moreover, at Id., (4)(c), she was entitled to "Documentation," viz., "Accurate detailed justification and documentation must accompany any removal." Mrs. French failed to receive any "accurate" or "detailed justification" because it was all a sham and a fraud. Thus, Mrs. French saw her procedural rights ignored, files purged to defeat her defense, denied access to witnesses who were also harassed by management, promotion of a continuing fraud, and utilization of perjury to consummate the unlawful and wrongful taking of Mrs. French's liberty interest, her job and

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[5]Mrs. French received a contrived notice the same day she was fired and forced out. (App. 135-136.)

good name. This tainted the entire state processes start to finish to assure that she could not vindicate herself.[6]

The state actor respondents routinely refused, foiled, and biased all of Mrs. French's procedural and substantive rights by improper disclosures, false accusations, false innuendos, and hallway and public announcements that she was to be criminally indicted. The entire scene was one of the Star Chamber.

Because her procedural and substantive rights were all codified into statutory, regulatory, and administrative policy, custom, and processes, all the state respondents had actual and constructive notice of these "clearly established" state grievance rights, yet they maliciously, fraudulently and

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[6]Counsel's requested access to witnesses and documents (App. 147-148). The same was denied to her. (App. 102-103.)

willfully violated them. While they were "clearly established" and Mrs. French ran through processes afforded, the state processes were willfully and intentionally tainted to seal her fate.

On January 15, 1992, the District Court entered its order of dismissal and granted summary judgment (App. 28-29) and of the same date, entered its memorandum opinion. (App. 30 to 45.)

Mrs. French within 10 days filed a FRCP 59(e) motion proffering many of the discovery revelations obtained by due diligence obtained in discovery which she had little or no chance to present to the District and discovered in the panel process, which the District Court refused to stay. In the District Court's opinion, it admitted that summary judgment would be inappropriate if Mrs. French could prove she was denied access to documents.

(App. 37.) She pleaded this in her Complaint admitted to by the Respondents by Albert Lilly's letter of August 10, 1992. (App. 102-103.) Nevertheless, the District Court said it was too late.

Mrs. French having completed the panel process which voted against her 2 to 1, soon thereafter filed a FRCP 60(b) motion declaring "newly discovered evidence" with submittals of a tainted state grievance and panel process, non-impartial panel members, evidence of perjury, evidence of fraud and deceit, including that a fraud on the Court had also occurred. The District Court denied those motions and complained Mrs. French's outcries of due process violations had come to it "ad nauseum."

On appeal, the United States Fourth Circuit panel affirmed the District Court by unpublished opinion dated December 23, 1993.

(App. 5 to 14.) A Petition to Rehear En Banc was denied January 19, 1993. (App. 3-4.)

Mrs. French submits that summary judgment by the District Court on her constitutional claims was inappropriate; and that summary judgment on the basis of qualified immunity is entirely inappropriate with these egregious and outrageous facts which shock the conscience of any fair-minded person. She submits that there is a division in the Circuits of the United States whether or not full or limited discovery in these types of cases to prove unconstitutional intent and malicious motives is proper in view of the Harlow and Creighton cases (cited below) and, whether or not regardless, qualified immunity, in this sort of case on the face of the Complaint, is even a proper defense upon which to grant summary judgment.

Mrs. French submits that her case has

national importance. Any person and citizen treated as she was should be entitled to full discovery and a trial on her claims which saw the successful perpetration of a fraud, perjury, falsehoods, and a tainted process to accommodate the unlawful and wrongful taking of her job, benefits, and to destroy her good name in her community, thereby depriving her of her liberty interest without any fair due process of law or any substantive due process under the Fourteenth Amendment.

BASIS FOR JURISDICTION OF FEDERAL DISTRICT COURT

Jurisdiction of the District Court was invoked under 28 U.S.C. 2201, 1331, 1343(a) seeking remedies under 42 U.S.C. § 1983. On motion for summary judgment, the District Court summarily dismissed Mrs. French's Complaint holding she received due process because she was afforded all the State processes (which she claimed were tainted), and even if she didn't, the acts and omissions of the respondents were protected by the defense of qualified immunity.

REASONS FOR ALLOWANCE OF THE WRIT

A growing conflict between the Circuits exists as to the right and extent of allowable discovery by citizens to prove their cases of unconstitutional motives and intent causing deprivations of federally protected rights by local government state actors. To defeat the defense of qualified immunity, particularly as to cases involving fraud and unconstitutional motive, full discovery and the presentation of that discovery should be allowed.

The Court needs to enunciate an applicable rule on the extent of discovery when a supportable case of clear denial of fundamental procedural and substantive rights occur due to fraud, which fraud embraces supportable claims of perjury, falsehoods, fabrications as here stated.

Further, in such instances, summary judgment on the basis of qualified immunity

should be deemed to be entirely inappropriate if the Plaintiff can support any set of facts proving the same. In so making an enunciated rule in this regard, the Court would modify its holdings in Harlow v. Fitzgerald 457 U.S. 800 (1982) and Anderson v. Creighton, 483 U.S. 635 (1987) which strictly limited discovery enhancing among the Circuits a carte blanche granting of summary judgment based on qualified immunity. On the issue, the Circuits have been divided.

The Complaint was sufficient to allow discovery so authorized by a proper Court pre-trial order. The discovery obtained should have been received by the District Court before granting summary judgment to allow the Plaintiff a fair opportunity to present proof of sufficient controverted facts, other than in the Complaint, coupled with previously submitted affidavits, that would have clearly

defeated the granting of summary judgment.

Mrs. French's liberty interest, her job, benefits, and good name were deprived by a tainted state process designed to vindicate the same. This presents a triable issue under the substantive due process clause of the Fourteenth Amendment in that her job, benefits, and good name in her community were destroyed due to a tainted due process promoted by state actors which violated inherent fundamental fairness guaranteed by the Fourteenth Amendment.

The District Court under FRCP 60(b), when duly informed of perjury, fraud, and a perpetrated fraud on the Court, had an absolute and inherent judicial duty to make a proper inquiry of the allegations and to receive evidence to allow the Plaintiff to prove the same to preserve the judicial integrity of the Court and to vindicate her

rights protected under the Constitution.

SUMMARY OF THE ARGUMENT

In ABF Freight System, Inc., v. National Labor Relations Board 62 U.S.L.W. 4092 (January 25, 1994, #92-1550), this Court wrote:

> False testimony in a formal proceeding is intolerable. We must neither reward or condone such a "flagrant affront" to the truth seeking function of adversary proceedings. . . . In any proceeding, whether judicial or administrative, deliberate falsehoods "may well affect the dearest concerns" of the parties before a tribunal. (Id. 4094)

Justice Kennedy wrote "True, the gravest consequence of lying under oath is the affront to the law itself." (Id. 4095) And Justice Scalia wrote "The principle that a perjurer should not be rewarded . . . has a long and sensible tradition in common law." (Id. 4096)

The continuous, unabated, and audaciously fraudulent conduct of the certain respondents, including their fraud and deceit perpetrated in a state mandated process to taint that process to make it futile and meaningless, to assist their wrongful and unlawful deprivation of Mrs. French's sixteen years of permanent and distinguished employment, has been rewarded. The perjurers and the fraud even practiced on the Court have been rewarded.

The revelations gained in discovery granted to Mrs. French by the District Court, was cut off in the critical hours of fully uncovering the scam. Refusing to grant even a FRCP 60(b) on substantive evidence of wrong-doing only facilitated the fraud on Mrs. French and on the Court. Her discovery, getting to the truth, was nicked on the basis of qualified immunity just in time to close

the flood gates of truth which would have tumbled the Respondents' walls of Jericho in Caroline County.

The Circuits of the United States since the ruling of Harlow v. Fitzgerald 457 U.S. 800 (1982), have been confused at the very least as to when summary judgment at the earliest moment is proper in these types of cases. Harlow changed pre-Harlow stages of qualified immunity where trials were necessary to adjudicate fact-specific issues because this Court was concerned about the "costs" of pre-trial discovery and trials involving high-level government officials. The Court adopted a standard that could resolve these issues without discovery or a trial. (Id. at 817-818).

A question of law, the Court could determine if the defendants violated constitutional guarantees through violation of

legal norms "clearly established." The end result is that the good citizen, the individual, who steps into a Court for the first time in her life to vindicate her rights, her job, and her name, is quickly shot down to preserve the fiefdom of powerful state government wrong-doers. "Clearly established" rights as were vested to Mrs. French become lip-service, futile, and plainly meaningless.

Next the Court decided Anderson v. Creighton 483 U.S. 635 (1987) to purportedly lessen the confusion while upholding the objective standard of whether a reasonable officer could have believed Anderson's warrantless search to be lawful, in view of "clearly established law."

However, while this Court has held that bare allegations of malice would not suffice to allow discovery to go forward, an unconstitutional intent carried out with

malice, fraud, and even perjury should be fully discoverable as a matter of pure common sense. Lawyers are taught elemental Constitutional and common law principles require a Court to inherently enforce discovery to uncover the same. The Circuits of the United States disagree and are in disarray as to this issue. Jefferson and other founding fathers, Madison, Franklin, Washington, all forewarned of the corruption of a few in power that use government to do wrong upon citizens.

The Seventh Circuit has held that once the Plaintiff proves intentional misconduct of a high level of culpability, the state official could not have acted "reasonably." House v. Felder (852 F.2d 901, 917-20, rev'd 7th Cir., en banc 1988). The D.C. Circuit in Martin v. Metropolitan Police Dept. 812 F.2d 1425, 1433 (D.C. Circuit, 1987) recognized the

need for discovery to assist the Plaintiff on proof of unconstitutional motive so to "come forward with something more than inferential or circumstantial support for his allegation of unconstitutional motive." These Circuits would have given Mrs. French full discovery and a trial.

The Fifth Circuit in Geter v. Fortenberry 849 F.2d 1550, 1554 (5th Cir., 1988) noted that where the Plaintiff's pleadings assert facts which, if proven, would defeat a qualified immunity defense, limited discovery tailored to the qualified immunity issue should be permitted. Other Circuits hold just the opposite, utilizing the cases of Harlow and Creighton to routinely deny discovery. In his concurring opinion in Harlow, Justice Brennan argued that a "knowing and deliberate" violation of the constitutional right should defeat the claim

to qualified immunity. Mrs. French in her Complaint pleaded the letter of Albert Lilly (App. 102-103) which denied her access to documents and witnesses violating state policy, procedure, and Fourth Circuit law as announced in Detweiler v. Commonwealth of Virginia 705 F.2d 557 (4th Cir. 1983).

In constitutional litigation against government officials, as to clearly established rights, what is "clearly established"? This Court should clearly define it.[7] Certainly Mrs. French had every right, as codified and published by known Virginia statutes, regulations, administrative policy, and personnel manuals, to a fair process, an honest process, free of fraud, deceit, and perjury. It was "clearly

---

[7]The Sixth Circuit in Dungherty v. Campbell, 935 F.2d 780, 784 (6th Cir., 1991) tried a codification of principles. Based on this decision, Mrs. French would get a trial.

established" she had a statutory right, mandated, to an "impartial panel," (per the Virginia Code) with 15 days prior notice (App. 173-174) before dismissal and a host of other "clearly established" processes and guarantees. These well known protections for the state employee were maliciously and flagrantly violated by state actors.

The misconduct of all the state respondents violated "clearly established" Virginia statutory and constitutional rights of Mrs. French. Summary judgment for the Respondents based on qualified immunity and summary judgment on her Fourteenth Amendment rights was therefore clearly inappropriate and improper, violating FRCP Rule 56, and constitutional case law of this Court. Mrs. French was exonerated of the spurious criminal allegations designed to taint her processes. (App. 175-178.) Yet the "lie," falsely

created, (App. 179) purportedly created by Mrs. Badillo, that Mrs. French had admitted fraud, a false statement of fact, was routinely and blatantly circulated throughout her state processes to bias and predispose those who would sit in judgment of her.

The District Court ignored all of these revelations shutting down discovery abruptly January 4, 1993 before any of it could be presented to the Court. The District Court ignored entirely Colonel French's affidavit (App. 151-161), never refuted, submitted prior to the Court's summary judgment order, that Mrs. Badillo's pawn, Renee' Woods, had admitted her complicity, fraud, and involvement to Colonel French being in fear of losing her job. Renee' Woods admitted to falsely accusing and pinning Mrs. French with a firable offense to avoid Mrs. Badillo's wrath and cruelness to gain a job.

Mrs. French also has a liberty interest under the substantive due process clause of the Fourteenth Amendment that protects her job; benefits, and reputation. The respondents purposely leaked the spurious charges in and about the government and the community without first allowing her a fair process at all, and, what process she was given was purposely tainted by publicating the same to assure her dismissal. Her good reputation and her protected proprietary interest, her job, and benefits, were thereby unfairly taken and destroyed making any state process to vindicate the same meaningless and futile.

This Court's decision in Board of Regents v. Roth 408 U.S. 564, 569-70 was entirely ignored by the District Court and the Fourth Circuit. Mrs. French's liberty interest was not even addressed by the lower

Courts. She lost not just her reputation, she has lost everything dear to her she had worked sixteen years to achieve, her community professional and business associations, her job and benefits, because the named state actors, using fraud and even perjury and fabrications, so tainted the process that the wrongful and unlawful taking was virtually guaranteed without challenge. With a malicious, tainted state process purposely orchestrated by state actors, she had no fair opportunity to even refute the spurious charges made public. For these very reasons, Mrs. French has a valid §1983 action under the Fourteenth Amendment to vindicate her liberty interest.

Finally, the Rule 60(b) motion brought multiple revelations to the District Court including the tainted panel and proof of perjury and a claim of a practiced fraud even

on the Court. The District Courts of this Nation have a duty to make proper inquiry to these charges, especially when the Court was informed with credible evidence that a fraud on the Court had also occurred. By its very refusal to take evidence and make a proper inquiry, the perjurer and those promoting the fraud and fabrication were unjustly rewarded and given qualified immunity from prosecution. This cannot be the law of the Fourth Circuit or any Circuit of this Nation.

CONCLUSION

Mrs. French's case demonstrates that the broad brush of summary judgments, based on qualified immunity, and refusing available discovery granted by a pre-trial order to demonstrate controverted facts to take the matter to trial, all which were entirely ignored, can readily and unjustly deprive an American citizen of his or her fundamental

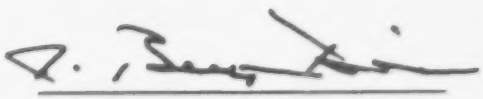
rights so taken by the willful and deliberately wrongful acts and omissions of state actors who succeeded in their wrongs by promoting fraud, deceit, perjury, and fabrications.

Accordingly, for the reasons stated, Petitioner prays that a writ of certiorari to the judgment of the United States Court of Appeals for the Fourth Circuit will be granted.

MARCIA S. FRENCH,

Petitioner

By Counsel



J. BENJAMIN DICK

Law Offices of J. Benjamin Dick
J. BENJAMIN DICK
Counsel of Record
421 Park St., Suite #2

Charlottesville, VA. 22901
VSB # 018338
804-977-6607

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U.S. Fourth Circuit

Appendix

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

January 25, 1994

No. 93-1504

CA-92-585-R

MARCIA S. FRENCH

Plaintiff - Appellant

v.

RONALD L. KING, Individually and in his official capacity, Director of Caroline County Department of Social Services; BLANCHE A. BADILLO, Individually and in her official capacity, Supervisor; CAROLINE COUNTY; KENNETH DAVIS, Chairman; RENEE WOODS, Individually and in her official capacity; CALVIN B. TAYLOR, Board Member; IRENE FIELDS, Board Member; PATRICIA MURRAY, Board Member; ELLEN CARTER, Board Member; WILLIAM JETER, Board Member; JOHN DOE, in his or her individual and official capacity to be discovered

Defendants - Appellees

O R D E R

Appellant has filed a motion to stay the mandate pending application to the United States Supreme Court for a writ of certiorari.

The Court denies appellant's motion to stay the mandate.

/s/ Bert M. Montague

CLERK

J. Benjamin Dick, Esq.

421 Park Street

Suite 2

Charlottesville, VA 22902

FILED: January 19, 1994

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 93-1504

(CA-92-585-R)

MARCIA S. FRENCH

Plaintiff - Appellant

v.

RONALD L. KING, Individually and in his official capacity, Director of Caroline County Department of Social Services; BLANCHE A. BADILLO, Individually and in her official capacity, Supervisor; CAROLINE COUNTY; KENNETH DAVIS, Chairman; RENEE WOODS, Individually and in her official capacity; CALVIN B. TAYLOR, Board Member; IRENE FIELDS, Board Member; PATRICIA MURRAY, Board Member; ELLEN CARTER, Board Member; WILLIAM JETER, Board Member; JOHN DOE, in his or her individual and official capacity to be discovered

Defendants - Appellees

On Petition for Rehearing With Suggestion

For Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court

/s/ Bert M. Montague

Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 93-1504

MARCIA S. FRENCH

Plaintiff - Appellant

v.

RONALD L. KING, Individually and in his official capacity, Director of Caroline County Department of Social Services; BLANCHE A. BADILLO, Individually and in her official capacity, Supervisor; CAROLINE COUNTY; KENNETH DAVIS, Chairman; RENEE WOODS, Individually and in her official capacity; CALVIN B. TAYLOR, Board Member; IRENE FIELDS, Board Member; PATRICIA MURRAY, Board Member; ELLEN CARTER, Board Member; WILLIAM JETER, Board Member; JOHN DOE, in his or her individual and official capacity to be discovered

Defendants - Appellees

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond.

Robert R. Merhige, Jr., Senior District Judge.

(CA-92-585-R)

Argued: October 25, 1993

Decided: December 23, 1993

Before WIDENER and HALL, Circuit Judges, and MICHAEL, United States District Judge for the Western District of Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: J. Benjamin Dick, LAW OFFICES OF J. BENJAMIN DICK, Charlottesville, Virginia, for Appellant. John Adrian Gibney, Jr., SHUFORD, RUBIN AND GIBNEY, P.C., Richmond, Virginia,

for Appellee. **ON BRIEF:** John F. Ames, HUBARD, SAMUELS & AMES, Richmond, Virginia, for Appellant, Jean M. Kelley, County Attorney for Caroline County, Bowling Green, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Marcia French appeals from the grant of summary judgment entered by the district court in favor of Appellees on French's claim that her constitutional rights were violated when she was terminated from her job at the Caroline County Social Services Department. French also appeals the denials of her motions under Federal Rules of Civil Procedure 59(e) and 60(b).

The facts are stated briefly as follows. Ron King, Director of the Social Services Department, met with French on April 14, 1992 to inform her that she was facing serious disciplinary sanctions allegedly for concealing the file of an ineligible Medicaid recipient. Both King and French appeared before the Board of Social Services ("Board") to discuss the offenses committed by French, and the Board discharged French on King's recommendation. On April 17, 1992, French received written notice of the reasons for her termination. French received written notice of the reasons for her termination. French subsequently initiated the employee grievance process and met with her supervisor, Blanche Badillo, and Director King, both of whom concluded that the termination was warranted. French proceeded to step three of the grievance which was conducted by the Board on

August 18, 1992. After its hearing, the Board concluded that French was properly terminated.

French brought this action in the court below pursuant to 42 U.S.C. § 1983 against King and Badillo, a fellow co-worker, Renee Woods, and several officials of Caroline County. French alleges constitutional violations of due process, age and reverse race discrimination and several pendent state law claims. French complains that Appellees failed to meet certain procedural requirements throughout the grievance process and to submit documents which French had requested. French also insists that the Board was tainted by information it had received from Director King prior to the Board meeting regarding the grievance and a possible indictment against French.[1]

---

[1]French raises a specious claim that Appellees violated her right to a formal (continued...)

During the pendency of the federal court action, the parties appeared before a state panel for final disposition under the grievance process. Declining to stay the state panel hearing, the district court denied Appellees' motion to dismiss, initially believing that French could prove facts to support her contentions. However, the court subsequently granted Appellees' motion for summary judgment on all federal claims, finding no issues of material fact and holding that French had received due process in both

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[1](...continued)
indictment of fraud charges allegedly lodged against her by King. French bases her claim on King's letter to Larry Mason, Director of the Caroline County Welfare Division, on June 25, 1992, whrein King reqauested advice on how to proceed against French. (J.A. 117). Because the district court dismissed without prejudice Appellant's pendent state law claims for want of jurisdiction, we decline comment.

the pre- and post-termination hearings.[2]

The district court subsequently denied French's motion to reconsider under Fed.R.Civ.P. 59(e) after concluding that French was merely attempting to reargue the merits of her case. The court also denied French's Rule 60(b) motion for relief from judgment based on newly discovered evidence, stating that it was not persuaded to change its decision based on an affidavit that certain panel hearing members were believed to be predisposed in favor of the management of the Department.

We review *de novo* the district court's decision granting summary judgment. *Higgins*

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[2]Alternatively, the district court noted that even if it were to determine that the state grievance procedures failed to satisfy due process, Appellees would be entitled to qualified immunity if their actions met the requirements of the state grievance proceedings as they existed when Appellees acted. (J.A. 27).

v. E.I. DuPont De Nemours & Co., 863 F.2d 1162, 1166-67 (4th Cir. 1988). After such endeavor, we find that the district court correctly held that Marcia French received all the process she was due and that she failed to establish any evidence that her termination was based on illegal discrimination. We therefore affirm the grant of summary judgment to Appellees on the reasons provided by the district court.

We also reject Appellant's suggestion that the district court abused its discretion when it denied her motions to reconsider under Fed.R.Civ.P. 59(e) and for relief from judgment under Fed.R.Civ.P. 60(b). We agree with the district court that French was merely attempting to reargue the merits of her case and, more specifically, to contest the

substantive reasons for her termination.[3] Rule 59(e) is not designed to permit parties to submit evidence without justifying why such proof could not have been submitted to the court at the time the court entertained the summary judgment motion. *See RGI, Inc. v. Unified Indus., Inc.*, 963 F.2d 658, 662 (4th Cir. 1992). Such attempts being unjustified here, and finding no evidence of abuse, we affirm.

We also find no merit in Appellant's attack on the lower court's denial of her Rule 60(b) motion. Appellant presented as "newly discovered evidence" the affidavit of a grievance panel member, offering his opinion that his colleagues on the panel were

---

[3]Indeed, as the district court noted, French's allegations that she was discharged on the bases of age and reverse race discrimination and that she was denied due process "appear *ad nauseam* in the record." (J.A. 14).

predisposed to find in favor of management. This affidavit fails to satisfy the requirement of Rule 60(b)(2) that the evidence "by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." Thus, we reject Appellant's contention that the district court abused its discretion by denying her motion. *See Aliff v. Joy Mfg. Co.*, 914 F.2d 39 (4th Cir. 1990).

Finding no merit in Appellant's contentions, we affirm the district court on the basis of its decision.

AFFIRMED

FILED: October 6, 1993

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 93-1504

MARCIA S. FRENCH

Plaintiff - Appellant

v.

RONALD L. KING, Individually and in his official capacity, Director of Caroline County Department of Social Services; BLANCHE A. BADILLO, Individually and in her official capacity, Supervisor; CAROLINE COUNTY; KENNETH DAVIS, Chairman; RENEE WOODS, Individually and in her official capacity; CALVIN B. TAYLOR, Board Member; IRENE FIELDS, Board Member; PATRICIA MURRAY, Board Member; ELLEN CARTER, Board Member; WILLIAM JETER, Board Member; JOHN DOE, in his or her individual and official capacity to be discovered

Defendants - Appellees

O R D E R

It is ORDERED and ADJUDGED that the motion for summary affirmance filed in this case by appellees shall be, and it hereby is, denied.

With the concurrences of Judge Hall and Judge Michael.

/s/ H.E. Widener, Jr.

For the Court

A True Copy, Teste:

Bert M. Montague, Clerk

BY Cheryl Williamson

Deputy Clerk

B) PETITION FOR WRIT

OF CERTIORARI

APPENDIX

DISTRICT COURT

District Court

Appendix

Pages 19 - 179

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 3:92CV585
	)	
RONALD L. KING, et al.,	)	
	)	
Defendants.	)	

ORDER

For the reasons stated in the accompanying Memorandum, and deeming it just and proper so to do, the Plaintiff's motion for Relief From Judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure be and the same is hereby DENIED.

Let the clerk send copies of this Order and the accompanying Memorandum to all counsel of record.

Robert R. Merhige, Jr.

APR 26 1993
Date

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 3:92CV585
	)	
RONALD L. KING, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM

This matter is before the court on the Plaintiff's motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure for relief from judgment for alleged newly discovered evidence. On January 15, 1993, this Court granted the Defendant's motion for summary judgment, and on March 25, 1993, this Court Denied the Plaintiff's motion to reconsider pursuant to Rule 59(e). The Plaintiff also renewed her motion to stay the state grievance panel decision pending a

hearing and the taking of evidence.

The facts and allegations surrounding the Plaintiff's claim that she was wrongfully discharged on the basis of reverse race discrimination and age discrimination, and that she was subsequently denied Due Process appear ad nauseam in the record. The Plaintiff's motion for relief from judgment pursuant to Rule 60(b) alleges that newly found evidence establishes that grievance procedure panel members were predisposed to find for management. The Plaintiff supplies an affidavit from Edward N. Resio, a panel member of the grievance panel reviewing the Plaintiff's discharge. Mr. Resio states that it is his "instinctive impression" that two of his fellow panel members were predisposed in favor of management. This assertion is based on Mr. Resio's subjective opinion that his colleagues did not give proper weight to the

Plaintiff's version of controverted facts.

This affidavit does not persuade this Court that its previous decisions were erroneous, nor is this Court convinced that it is properly within the confines of Rule 60(b)(2) as "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b). . . " (emphasis added). For these reasons, the Plaintiff's motion for relief from final judgment will be Denied.

An appropriate Order shall follow.

Robert R. Merhige, Jr.
UNITED STATES DISTRICT JUDGE

APR 26 1993
Date

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 3:92CV585
	)	
RONALD L. KING, et al.,	)	
	)	
Defendants.	)	

ORDER

For the reasons stated in the accompanying Memorandum, and deeming it just and proper so to do, the Plaintiff's motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure for this Court to reconsider, alter, or amend its Order of January 15, 1993, granting the Defendants' motion for summary judgment, be and the same is hereby DENIED.

Let the clerk send copies of this Order and the accompanying Memorandum to all counsel of record.

Robert R. Merhige, Jr.
UNITED STATES DISTRICT JUDGE

3-25-93
Date

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 3:92CV585
	)	
RONALD L. KING, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM

This matter is before the court on the Plaintiff's motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure for this Court to reconsider, alter, or amend its Order of January 15, 1993, granting the Defendants' motion for summary judgment. The Plaintiff also renews her motion to amend her complaint and her motion for summary judgment.

After reviewing the Plaintiff's motion and listening to her renewed arguments at the hearing on this motion, this Court is

convinced as to the correctness of its original Order granting the Defendants' motion for summary judgment. This Court has repeatedly held that a motion made pursuant to Rule 59(e) can not be based upon "grounds which could or should have been presented prior to the entry of the judgment on the very issue which was the subject of the judgment." Johnson v. City of Richmond, 102 F.R.D. 623 (E.D.Va. 1984); Durkin v. Taylor, 444 F. Supp. 879 (E.D.Va. 1977). Rule 59(e) is not intended to give a disappointed litigant a post-judgment opportunity to reargue the merits of her case. Since that is precisely what was attempted in this case, the Plaintiff's motion will be Denied.

An appropriate Order shall follow.

Robert R. Merhige, Jr.
UNITED STATES DISTRICT JUDGE

3-25-93
Date

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 3:92CV585
	)	
RONALD L. KING, et al.,	)	
	)	
Defendants.	)	

JUDGMENT ORDER

For the reasons stated in the Memorandum of the Court this day filed and deemingit proper so to do, it is ADJUDGED AND ORDERED as follows:

Judgement is entered in favor of each of the defendants on Counts One, Two, Three, and as to each of the aforementioned counts, the defendants stand DISMISSED WITH THEIR TAXABLE COSTS.

IT IS FURTHER ADJUDGED AND ORDERED that all state pendant claims be and the same are

hereby DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.

Let the Clerk send copies of the Memorandum and this Judgment Order to all counsel of record and place this matter amongst the ended causes.

Robert R. Merhige, Jr.
UNITED STATES DISTRICT JUDGE

Date Jan 15 1993

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 3:92CV585
	)	
RONALD L. KING, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM

This matter is before the court on the Defendants' motion for partial summary judgment regarding an alleged qualified immunity defense. The Court is also prepared at this time to rule on the Defendants' previously filed motion for summary judgment taken under advisement by this Court on November 27, 1992. The most recent motion for partial summary judgment has been thoroughly briefed, and since the parties have waived oral arguments, the matter is ripe for

disposition according to the local rules.

The Plaintiff, Marcia S. French, a caucasian, is a former senior eligibility worker in the Caroline County Department of Social Services. The Plaintiff alleges that she was wrongfully discharged on the basis of reverse race discrimination and age discrimination, and that she subsequently has been denied Due Process. She asserts these claims under 42 U.S.C. §§ 1981 and 1983. The Plaintiff also asserts state pendant claims of fraud and deceit, slander and libel, wrongful discharge, intentional infliction of emotional distress, and injury to property and reputation.

The Plaintiff was employed with the Caroline County Social Services Department ("Department") from November 1, 1976, until her employment was terminated on April 17, 1992. Defendant Ronald King, the Director of

the Department, recommended to the Board of Social Services ("Board") that the Plaintiff should be discharged for alleged fraud and abuse of discretion. After the Board met with the Plaintiff, they followed King's recommendation and discharged the Plaintiff.

The Plaintiff has sued a number of Defendants who serve in various capacities in Caroline County. Defendants Kenneth Davis, Calvin Taylor, Irene Fields, Patricia Murray, Ellen Carter, and William Jeter are members of the Board. Defendant Ronald H. King is the director of the Department, Defendant Blanche Badillo is a supervisor in the Department, and Defendant Renee Woods is an eligibility worker in the Department. The Plaintiff also names Caroline County and John Doe as Defendants.

The Plaintiff alleges that the Defendants discharged her because of her age and race as part of an overall scheme to

refill positions in the Department with younger, African American relatives of employees of the Department. Her allegation of deprivation of Due Process stems from the contention that she was denied ready access to documents, records, and witnesses as part of her preparation for grievance procedures.

The Defendants' motions for summary judgment offer their view of the contested facts. The Defendants contend that the Plaintiff was discharged for her alleged mishandling of a Medicaid case involving Sarah Madison. The Defendants' allege that the Plaintiff fraudulently approved the Medicaid benefits of Sarah Madison and then took several affirmative measures to conceal the fraud. When the alleged fraud was discovered by Defendant King, he confronted the Plaintiff and claims that the Plaintiff admitted her fraud and attempted concealment.

Defendant King then addressed the next meeting of the Board of Social Services. At this meeting, the Plaintiff spoke to the Board and explained her position. King recommended her dismissal, and the Board voted to discharge the Plaintiff. King met with the Plaintiff two days later and advised her of the decision.

The Plaintiff survived a motion to dismiss because, at the hearing on November 27, 1992, this Court was not convinced that the Plaintiff could not prove any possible set of facts in support of her claim that would entitle her to relief. Caddell v. Singer, 652 F.2d 393 (4th Cir. 1981). Although the Plaintiff provided no support for her allegations at that time, the Court took the Defendants' motion for summary judgment under advisement to allow the Plaintiff further time for discovery. The Court also directed

expedited discovery to allow the Plaintiff to support her claim if possible.

Federal Rule of Civil Procedure 56 governs motions for summary judgment. Pursuant to Rule 56, summary judgment is appropriate only where parties do not dispute material facts that might affect the outcome of an action. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). To defeat summary judgment, a nonmoving party, who will bear the burden of proof at trial on a dispositive issue, must go beyond his or her pleadings with affidavits, depositions, interrogatories or other admissible evidence to show specific facts that amount to a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1985). Where the parties show no dispute of material fact, summary judgment is appropriate.

The Defendants' original motion for

summary judgment addressed the following three potential weaknesses in the Plaintiff's claims: 1.) That the Plaintiff was in fact provided adequate Due Process in the form of state grievance proceedings; 2.) That the Plaintiff had improperly pleaded her alleged section 1981 claim; and 3.) That the Plaintiff had named improper Defendants. The Defendants' most recent motion for summary judgment asserts a qualified immunity defense. The merits of these motions will be addressed individually.

The Defendants claim that since the Plaintiff was offered a pre-termination meeting and complete post-termination state grievance procedures, all due process requirements have been met. Dennison v. County of Frederick, 921 F.2d 50 (4th Cir. 1990); Crocker v. Fluvanna City Bd. of Public Welfare, 859 F.2d 14 (4th Cir. 1988);

Detweiler v. Commonwealth of Va. Dept. of Rehab. Services, 705 F.2d 557 (4th Cir. 1983). This is an appropriate issue for summary judgment, providing that there is no genuine issues of material fact. The Plaintiff does not challenge the adequacy of the form of the state grievance procedures. The Plaintiff, however as heretofore noted, alleges that the Defendants materially interfered with her access to records, documents, and witnesses.

If the Plaintiff could support the allegation that any of the Defendants interfered with her access to any information that she was entitled to during the grievance procedures, then this matter would be inappropriate for summary judgment. The Court notes that this would require the Plaintiff to establish that she was entitled to the material as a matter of law, and then go beyond the pleadings and produce some evidence

that establishes a genuine issue for trial. Celotex, 477 U.S. 317, 324 (1985). In this case, the Plaintiff has done neither, and therefore, the Defendants' motion for summary judgment as to the alleged deprivation of due process must be Granted.

The Defendants next attack the Plaintiff's reverse race discrimination case under 42 U.S.C. § 626. Although these claims are independent of each other, for the purposes of the Defendants' motions, they can be considered together. Viewing the Plaintiff's complaint liberally as required in a motion to dismiss, the Court concluded that it could, under that standard, conceive of a possible set of facts sufficient to entitle the Plaintiff to relief. For this reasons, these claims survived the motion to dismiss. The applicable standard for summary judgment, as stated, requires the party who bears the

ultimate burden of proof at trial, to go beyond the pleadings and produce affidavits, depositions, interrogatories, or other admissible evidence that establishes a genuine issue for trial. Celotex, 477 U.S. 317, 324 (1985).

In the instant case, the Plaintiff only offers conclusory allegations of reverse race discrimination and age discrimination. The only affidavits offered in support of these allegations actually support the theory that the Plaintiff was discharged for fraud. The fact that the Plaintiff contests the fraud allegation against her does not create a genuine issue of reverse race discrimination or of age discrimination. In fact, the Plaintiff must establish must allege and establish as an issue for trial, that "but for" the alleged discriminatory act(s), she would not have been discharged. EEOC v.

Western Elec. Co., 713 F.2d 1011 (4th Cir. 1983). The Plaintiff fails to connect the alleged false allegations of fraud to any discriminatory intent on the part of the Defendants. Therefore, the Defendants' motion for summary judgment must be Granted as it relates to the Plaintiff's claims of reverse race discrimination under 42 U.S.C. § 1983 and her age discrimination claim under the Age Discrimination in Employment Act, 29 U.S.C. § 626.

The Defendants also attack the Plaintiff's naming of the County of Caroline as a party Defendant. The Plaintiff may maintain an action against the County, based on the actions of its employees, if the actions in question represent the execution of a policy or custom of the County. Spell v. McDaniel, 824 F.2d 1380 (4th Cir., 1987). The Plaintiff fails to support her allegation that

the actions complained of by Defendant King or by the individual members of the Board represents a policy or edict of Caroline County. For this reason, the Defendants' motion for summary judgment regarding the County of Caroline as a named Defendant must be granted.

The Defendants' most recent motion for summary judgment addresses a related defense of qualified immunity for the individually named Defendants. The Defendants' motion attempts to assert the defense of qualified immunity specifically to the Plaintiff's section 1983 claim, and although summary judgment has already been granted with respect to this claim, the qualified immunity motion is well taken.

Governmental officials sued for damages attributable to alleged constitutional violations are entitled to the defense of

qualified "good faith" immunity if their challenged conduct does not violate a clearly established right in a manner that a reasonable person would have known. Davis v. Scherer, 468 U.S. 183 (1984). The Fourth Circuit's most recent decision in this area furthers this proposition and holds that officials are not liable for bad guesses in gray areas and that the manner in which the right applies must be apparent. Maciariello v. Summer, ___ F.2d ____, 1992 U.S. App. LEXIS 19160 (4th Cir. Aug. 18, 1992).

In the instant case, the Defendants followed all of the requirements of the state grievance proceedings. For at least nine years, the courts have uniformly upheld the grievance procedure against constitutional challenges. Detweiler v. Commonwealth of Va. Dept. of Rehab. Services, 705 F.2d 557 (4th

Cir., 1983). No subsequent case has held that any aspect of the state grievance procedure is unconstitutional. In fact, the cases specificially declare that the grievance procedure satisfies the requirements of Due Process. Dennison v. County of Frederick, 921 F.2d 50 (4th Cir. 1990); Crocker v. Fluvanna Cty. Bd. of Public Welfare, 859 F.2d 14 (4th Cir. 1988). Thus, even if this Court were to find that the state grievance procedures fall short of due process requirements, which it specifically does not, the Defendants would still be entitled to qualified immunity if their actions met the requirements as they existed at the time of their actions.

The Plaintiff has correctly noted that in cases such as here, where intent is an essential element of the constitutional claim, the Court must consider that intent in evaluating the qualified immunity test.

Hobson v. Wilson, 737 F.2d 1 (D.C. Cir. 1984). As the Plaintiff cites, however, ". . . plaintiff to avert dismissal short of trial, must come forward with something more than inferential or circumstantial support for his allegation of unconstitutional motive. That is, some direct evidence that the officials' actions were improperly motivated must be produced if the case is to proceed to trial." Martin v. Metropolitan Police Dept., 812 F.2d 1425, 1433 (D.C. Cir. 1987).

Once again, the Plaintiff has filled her response with conclusory statements and unsupported allegation with promises of forthcoming support from ongoing discovery. This Court was reluctantly tolerant of the practice over one month ago when it took the Defendants' original motion for summary judgment under advisement. At this late stage, two months prior to trial, it is not

unreasonable for the Defendants' and this Court to expect the Plaintiff to support her claims with interrogatories, affidavits, depositions, or some other form of admissible evidence. It is to be noted that this case has been pending almost four months. Absent the necessary support, the Defendants' motion for summary judgment on the grounds of qualified immunity is well taken.

In view of the Court's conclusions set out herein, an Order granting judgment to the Defendants on all federal claims is required. The pendant state claims fail for lack of jurisdiction and will be dismissed without prejudice.

An appropriate Order follows.

Robert R. Merhige, Jr.
UNITED STATES DISTRICT JUDGE

Jan 15 1993
Date

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 3:92-CV-585
	)	
RONALD L. KING, et al.,	)	
	)	
Defendants.	)	

ORDER

For the reasons stated from the bench, and deeming it just and proper so to do, the Defendants' motion to dismiss in this matter be and the same is hereby DENIED. The Defendants' motion in the alternative for summary judgment is taken under advisement.

This Court's pre-trial Order is in effect.

Let the clerk send a copy of this Order to all counsel of record.

Robert R. Merhige, Jr.
UNITED STATES DISTRICT JUDGE

Dec 8 1992
Date

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH, CIVIL ACTION

v. No: 3:92CV585

RONALD L. KING, etc., et al.

INITIAL PRE-TRIAL ORDER

Deeming it proper so to do, it is ADJUDGED and ORDERED that:

1. Unless already filed, answers to the complaint will be filed within ten (10) days of this date unless as otherwise mandated in the Federal Rules of Civil Procedure. Any such filing will not be deemed a waiver of prior motions.

2. Counsel will meet with the Court in chambers at 9:03 A.M., on Tuesday, November 10, 1992 for purposes to setting this case for trial, and, if necessary, the setting of a date for a formal pre-trial

converence.

3. All counsel should anticipate a trial date within ninety (90) days of this date except in cases of protracted litigation.

4. All counsel are admonished to expedite discovery.

5. Counsel attending are to be sufficiently knowledgeable of the case to respond to such queries as the Court may deem appropriate, and be prepared to discuss settlement prospects.

6. If counsels' office is forty or more miles from Richmond, they may attend the conference telephonically. They may call the undersigned precisely at the time scheduled for your conference and we will utilize the Court's telephone speaker so all present may participate. If more than one lawyer on the case has an office forty or more miles from Richmond and wishes to attend the conference

telephonically, it will be the responsibility of the lawyer whose office is furthest from Richmond to arrange a conference call amongst the lawyers and to contact the Court once all lawyers are on the line.

Utilization of the foregoing is the responsibility of counsel desiring it and failure to reach the undersigned at the time scheduled will not delay the setting of a trial date which must be accepted as final.

The telephone number is (804) 643-7171.

Let the Clerk send copies of this order to counsel of record and to pro se.

Robert R. Merhige, Jr.
UNITED STATES DISTRICT JUDGE

Date: October 29, 1992

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH

v.

CIVIL ACTION
No: 3:92CV585

RONALD L. KING, etc., et al.

PRE-TRIAL ORDER

Deeming it proper so to do, it is ADJUDGED and ORDERED as follows:

1. Within fifteen (15) calendar days from this date, counsel for the respective parties shall meet and confer in an effort to enter into written stipulations of any uncontroverted facts.

2. Except for good cause shown, motions for the joinder of other parties and/or the amendment of pleadings will not be entertained unless made within fifteen (15) calendar days of this date.

3. Motions for summary judgment will be

deemed untimely unless filed at least thirty five (35) calendar days before trial.

4. Between ten (10) and twenty (20) calendar days prior to trial, counsel for the respective parties herein shall meet and confer in an effort to enter into further written stipulations of any uncontroverted facts, and all stipulations, if any, shall be filed with this Court no later than five (5) calendar days prior to trial.

5. On or before ten (10) calendar days prior to trial, plaintiff herein shall file a list of proposed exhibits with the Clerk and shall, prior thereto, either forward copies of said proposed exhibits or make same available to all other counsel for examination. Each defendant shall file a list of proposed exhibits after having exhibited copies of same or having made them available for examination to all other counsel within seven (7) calendar

PUBLISHER'S NOTE:

THE FOLLOWING PAGES WERE UNAVAILABLE FOR FILMING:

Pages 53 thru 56 and 61

intended to be called, and each defendant shall file a corresponding list no later than eleven (11) calendar days prior to trial; plaintiff has leave to file a list of rebuttal witnesses three (3) calendar days thereafter. This listing of a witness shall constitute a representation by counsel that the witness possesses relevant evidence and has either agreed to appear or has been or will be timely subpoenaed. No witness listed may be excused except by leave of court or with the consent of all parties. Failure to comply with this paragraph may, in the absence of exceptional circumstances, result in preclusion of a witness's testimony and/or sanctions.

12. In reference to paragraphs 1, 4, and 5 herein, unless otherwise agreed, the parties shall meet at 10:00 a.m. on the last day required in accordance with the respective paragraphs, in the conference room of this

Court; unless said date falls at a time at which the Clerk's Office is closed, in which event such meeting shall be held on the Friday preceding said closing of the Clerk's Office, but in no event in fewer days than required under each of the respective paragraphs aforesaid.

13. Unless counsel, within ten (10) calendar days of the entry of this order, moves under Federal Rule of Civil Procedure 5(d) to require the filing of all discovery materials, no party shall file any depositions upon oral examination or upon written questions, interrogatories, requests for documents, requests for admission, or answers and response thereto with the pleadings or papers in this case. However, at any time, upon motion of a party for good cause shown, or on its own initiative, the Court may require the filing of all discovery material

or specific discovery material obtained in the course of this litigation.

14. Counsel are admonished that no photo or documentary exhibit shall be shown to the jury during the course of trial unless a separate copy of said exhibit is available for the use of each juror, or the exhibit is of such size or is enlarged to such size that the jurors as a body can examine the exhibit or enlargement.

15. If less than a complete deposition is to be read to the jury, or presented to the Judge for reading, the party so offering shall highlight the tendered portions. The other party, or parties, shall do likewise in designating such additional portions as such party wishes to offer or contends should, in fairness, be read.

16. In complying with this Order, any party, regardless of his, her, its or their

formal designation, shall be deemed a plaintiff if asserting one or more affirmative claims.

Let the Clerk send copies of this Order to all counsel of record.

/s/ Robert R. Merhige, Jr.
UNITED STATES DISTRICT JUDGE

Date: November 10, 1992

Individually and in her official capacity, Supervisor.

Serve at: Caroline County Social Services Dept.

State Route 207

Bowling Green, Virginia

and,

CAROLINE COUNTY,

Serve: JEAN M. KELLY

County Attorney

142 Milford Street

Bowling Green, Virginia

and,

KENNETH DAVIS, CHAIRMAN

Serve at: P.O. Box 143-E

Beaverdam, Virginia 23015

and,

RENEE' WOODS,

Individually and in her official capacity.

Serve at: Rt. 1, Box 87

Ruther Glen, Va. 22546

and,

CALVIN B. TAYLOR, Board Member

Serve at: Rt. 2, Box 304

Woodford, Va. 22580

and,

IRENE FIELDS, Board Member

Serve at: Rt. 1, Box 1854

Hanover, Va. 23069

and,

PATRICIA MURRAY, Board Member

Serve at: Rt. 1, Box 136

Woodford, Va. 22580

and,

ELLEN CARTER, Board Member

Serve at: POB 191

Bowling Green, Va.

and,

WILLIAM JETER, Board Member

Serve at: POB 62

Front Royal, Va.

and,

JOHN DOE,

In his or her individual capacity, to be discovered.

Defendants.

NOTE: The above Defendant Members of the Social Services Board are served in their individual and official capacities.

COMPLAINT

Note: All underlined words and bold prints are emphasis added.

A. JURISDICTION.

This complaint is brought under the laws and acts of Congress and under the Constitution of the United States and the Virginia Constitution to guarantee all rights, privileges and immunities thereunder secured unto its citizens. This action is brought to

vindicate fundamental rights for monetary, declaratory and injunctive relief as well as to exercise all remedies provided by the laws of the United States to secure and redress all of Plaintiff's constitutional rights hereinbelow asserted to have been violated by the Defendants. A JURY TRIAL IS DEMANDED. Liability by judgment is requested to be imposed jointly and severally for all awarded damages upon the Defendants.

This Complaint arises and grants this Court jurisdiction under 28 U.S.C. §§ 1331, 28 U.S.C. §2201, 1343 (1) (3), 42 U.S.C. 1983, and 42 U.S.C. § 1981, the latter being on the basis of reverse discrimination, and for alleged violations under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, both the due process and equal protection clauses, and Article I, Sections 1, 7, and 11 of the Virginia Constitution.

Pendant jurisdiction pursuant to the federal claims is asserted. Plaintiff is also alleging a violation of her rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e) et. seq. and 42 U.S.C. § 1981 and Section 7(b), 29 U.S.C. 621 et. seq., and 626(b), of the Age Discrimination in Employment Act of 1967, enforceable under 28 U.S.C.§ 1337.

THE PARTIES

1) The Plaintiff was permanently employed by the Caroline County Social Services Department on November 1, 1976. She remained an employee with promotions up to the rank of Senior Eligibility Worker in 1991 and obtained above average evaluations throughout her career until her alleged wrongful dismissal on or about April 17, 1992, a dismissal promoted by Defendants Ronald L. King, Director, and Blanche A. Badillo,

Supervisor, in collaboration with Defendant Woods, and, sustained by "the Third Step" of the State Grievance Process by the named Board Member Defendants, thereby wrongfully and illegally taking Plaintiff's period of meritorious employment of nearly 16 years from her.

As hereinbelow set forth, the Plaintiff asserts her multiple claims under the Constitutions of the United States and Virginia and declares her wrongful discharge was unlawful and consummated by wrongful conduct and impermissible constitutional infringements by the named Defendants including the Board of Social Services Defendants.

2) Defendants King and Badillo constituted Plaintiff's immediate supervisors. Defendant King, being the "Director," who was employed by the Defendant Caroline County

Board of Social Services in or about the year 1989, and, Defendant Badillo, being similarly employed in November of 1991, are in charge of staff and employees. Defendant King terminated the Plaintiff on or about April 17, 1992 with the concurrence of Defendant Badillo's "Written Notice" both of who the Plaintiff asserts violated Plaintiff's rights under the said Constitutions and under federal and state laws, both statutory and at common law, prohibiting and protecting the Plaintiff from the same as hereinbelow set forth and accomplished in an illegal manner not supported by facts, evidence, or as a matter of state or federal law, the taking of the Plaintiff's job without due process of law and in violation of other enumerated constitutional rights and state law.

3) Defendant County of Caroline County, a state recognized political subdivision or

municipality of the Commonwealth of Virginia, by its duly elected Board of Supervisors, is charged with the power to constitute and to appoint persons to act as members of a local board of social services or public welfare pursuant to Virginia Code §63.1-38 et. seq., and, to appoint one of its members, a Board of Supervisor member, to be a member of the Board of Social Services, that member being Defendant Supervisor Calvin Taylor. The County, through its Board of Supervisors, is mutually liable for the widespread practice of wrongs perpetrated against the Plaintiff by the Board of Social Services for which the County knew or should have known by its enacted policy, custom, and usage so ratified, adopted, affirmed by the Board of Supervisors and practiced by its Board of Social Services. Accordingly, the said party violated her fundamental rights.

Service of process in Virginia for suits against county government is proper upon the County Attorney who is duly served. As duly constituted under the colour of state law, the County government, Plaintiff asserts the County government with the local social services board, upon whom the Board of Supervisors can place or remove its members pursuant to Va. Code §63.1-45, have also affected official policy, custom, and usage adversely affecting the Plaintiff and her constitutional rights hereinbelow set forth.

4) Defendants Davis, Taylor, Fields, Murray, Carter, and Jeter constitute the board members of the Caroline County Social Services against whom the Plaintiff asserts that multiple claims and violations of her rights exist due to said board members' negligence or willful, intentional, and wrongful conduct disregarding recklessly the state enacted

rights and similarly violating the Plaintiff's property interests and the Plaintiff's fundamental rights under the said Constitutions and under federal and state laws prohibiting the same as hereinbelow set forth.

All said Board Defendants pursuant to Virginia Code §63.1-4 take an oath of office to abide by laws of Virginia and the federal and state Constitutions. As a board, the members constitute the "Agency Head" designated to be the "Third Step" of the grievance process authorized by Virginia Code §2.1-114.5:1. The Respondent Agency Head heard the "Third Step" and against whom the Plaintiff asserts effected its decision in bad faith, negligently and/or willfully and intentionally by policy, custom, and usage and in reckless disregard and in violation of her rights under the United States and Virginia Constitutions and under the laws of the

federal and state jurisdictions.

5) John Doe is a person(s) whom are not yet identified but who the Plaintiff asserts will be identifiable in discovery who actively participated in the state action to violate and defeat the Plaintiff's constitutional rights and to violate both federal and state laws, both statutory and at common, to intentionally harm the Plaintiff.

PROCEDURAL REQUIREMENTS

6) On or about April 20, 1992, Plaintiff filed a complaint of employment discrimination under the Age Discrimination Employment Act of 1967 and such charge was filed within 180 days of the April 17, 1992 offense of discharging the Plaintiff which she has asserted was due in part to her age. On June 12, 1992, by letter of the United States Equal Employment Opportunity, Baltimore District Office, Marilyn S. Booker,

Supervisor. Plaintiff was informed she could sue within 2 years. Plaintiff, by the act duly amended, has timely filed within 90 days of the receipt of this letter. Plaintiff asserted that her persecutors composing director and supervisor positions are younger and who used their power wrongly to cause her discharge due to her age and other factors.

7) Plaintiff also proceeds independently pursuant to the applicable jurisdictional grounds above recited on claims hereinbelow alleged and pursuant to 42 U.S.C. §1981 and on state pendant claims.

STATEMENT OF FACTS

8) Plaintiff had worked as a white employee of the Caroline County Department of Social Services as an Eligibility Worker from November 1, 1976 to April 17, 1992. After sixteen years, by official "Written Notice," she was terminated by the power of her Black

Director, Defendant Ronald L. King. (Complaint, Attachment "A," incorporated herein to this paragraph by reference.) Plaintiff factually asserts Defendant King had previously caused the resignation of a female employee of long standing employment, one Doris McLean, who was later unanimously reinstated by a duly constituted panel over Defendant King's objection. (Due to her wrongful treatment, Mrs. McLean has taken another job and elected to not return.)

Plaintiff submits that the forced resignation of Mrs. McLean and other actions of Defendant King constitutes a pattern of evidence of disparate impact that Defendant King, a black, seeks to eliminate white and black females, of long standing employment in the Caroline County Social Services Department to promote his personal dynasty which Plaintiff is of the knowledge and belief

includes hiring and promoting relatives and friends of a black county official and board member. Plaintiff also asserts that Defendant King has threatened to sanction, demote, or dismiss workers who have or would have any contact with the white Plaintiff or her attorneys pursuant to rules controlling her grievance process.

Further, that Defendant King selectively chose to not similarly charge and treat Defendant Renee' Woods, a white female, as he has treated the Plaintiff, Renee' Woods (whose fiance is a cousin of Sarah Madison) being handed the Sarah Madison file from Defendant King to work in August 1991 when it was assigned to her. Said Defendants used Renee' Woods to wrongly and unlawfully discredit the Plaintiff and in so doing to violate Plaintiff's rights, and in fact, to promote Renee' Woods to Senior Eligibility Worker, the

post formerly held by the Plaintiff.

In so doing, the Defendants King and Badillo have total dominion and control over Defendant Woods and did coerce and caused her to lodge a false and defamatory statement concerning the Plaintiff and by this false instrument to justify the wrongful termination of Plaintiff.

9) Plaintiff on April 20, 1992, lodged an Age Discrimination charge with the United States Equal Opportunity Office. (Complaint, Attachment "B," incorporated herein to this paragraph by reference.)

10) The Plaintiff officially began her perfection of state grievance process of the "First, Second, and Third" Steps as published by the Commonwealth of Virginia, Employee Grievance Procedure, effective July 1, 1990 as a non-probationary employee, the process and procedures here being annexed and incorporated

by reference as Complaint Attachment "C," which Plaintiff to the letter followed in perfecting her appeals steps.

11) Complaint Attachment "C," in the inset of the same, lists the Department of Employee Relations Counselors "for information and assistance." At all times proceeding through Steps "First," "Second" and "Third," the Plaintiff herself and counsel sought as did the Defendants and their counsel clarifications of procedure of the grievance process which procedural process she asserts factually was constantly and repeatedly frustrated and obstructed by all the Defendants including by John Doe(s) including but not limited to denying Plaintiff at Third Step Plaintiff's rights to documents, files, and interviews of witnesses.

12) At the earliest moment, the Plaintiff wrote her Director, who terminated

her, seeking the specifics of the termination charges as set forth in the "Written Notice," Complaint Attachment "a," so served on the Plaintiff. Plaintiff's letter to Defendant Ronald L. King, dated April 14, 1992, is here incorporated by reference as Complaint Attachment "D" and made a part of this paragraph. No response ever came to the said letter from the Director until April 17, 1992 when Defendent Badillo signed the "Written Notice" and served it on the Plaintiff. The Defendant King's inaccessibility would climax by his total refusal to testify at the Third Step hearing as a called "witness." (See below.)

13) At the "First Step," the parties utilized DERC Form A (revised 4/91) here attached and incorporated by reference in its completed form, Complaint Attachment "E." Plaintiff met with her supervisor, Defendant

Blanche A. Badillo, who had signed the "Written Notice." At this "First Step," Defendant Badillo added to the charges against the Plaintiff, and, for purposes of the Complaint, as verbatim here set forth, the new charges after the April 17, 1992 "Written Notice," are underlined, to wit:

NATURE OF OFFENSE AND EVIDENCE

(Executed by Defendant Blanche A. Badillo, 4/17/92 from "Written Notice.")

1) Gross neglect and continued neglect of duties, allowing an ineligible case to remain open.

2) Actively seeking the ineligible case out and instructing a subordinate employee to hide the case record from supervisor because case was ineligible and supervisor would close the case.

3) Intimidating, coercing an employee. Mrs. French has stated that she allowed

the ineligible case to remain open for 18 months knowing that the case was ineligible. Mrs. French has stated that she removed the case from another worker's file and told her to hide it and not show it to the supervisor.

FIRST STEP RESPONDENT WRITTEN REPLY

(Executed by Defendant Blanche A. Badillo, May 11, 1992.)

The [written notice] dated April 17, 1992 explains the nature of the offense and evidence. The written notice also indicates that it is a Level III infraction. The infractions were numbers 7, 8, 9, 10, and 14. At this time, you have not provided us with any new information that would change the circumstances of the dismissal.

14) The infraction numbers "7, 8, 9, 10 and 14" are here published verbatim from the

Employee Handbook and here incorporated by reference:

7. Intimidates, threatens and coerces employees or supervisors.

8. Conducts himself/herself in such a manner as to interfere with supervision or efficient, effective operations of the Agency.

9. Conducts himself/herself in any manner, which brings discredit to the Agency.

10. Gross neglect or continued neglect of his duties or his/her position.

14. Falsifies any records, such as, but not limited to, vouchers, reports, time or leave records or other documents, is found to be guilty of misrepresentation or material facts or alteration of records for the purpose of misrepresenting facts.

15) At all times preceding First Step, Second Step, and Third Step and at all times within those steps, the Defendants, as a reason to discharge Plaintiff, pointed solely to the Sarah Madison file as "allowing an ineligible case to remain open" and attributing thereto all charges and infractions to the same. No other specific charges were made and the Sarah Madison file and specific events surrounding that file were the alleged basis to terminate the Plaintiff.

Sarah Madison's file had been worked by a number of employees for years. On or about June 26, 1990 while the Plaintiff worked the file, family members caused to be filed at the Plaintiff's urging a state equity proceeding to appoint the daughter guardian of Sarah Madison to be in charge of her and of her real property for sale if appropriate, Sarah Madison suffering from dementia, and on July

5, 1990, the Circuit Court of Caroline County entered an order (judicial notice requested) appointing the daughter guardian, File #000086. The land and improvements of Sarah Madison at that time and at the time of this filing was worth and appraised by County tax assessors at approximately $6,850.00. With credits allowed by Medicaid, $2,500.00 for funeral expenses, and $2,000.00 cash allowed to each recipient, after expenses of sale such as surveyor costs, attorney fees, and the like, Sarah Madison has always been eligible for Medicaid. Said property is in a state of disrepair. In other words, the sale of the property where Sarah Madison is maintained presently would not realize enough money to make her ineligible under Medicaid.

16) Plaintiff, among others, over the years was assigned for requested eligibility Medicaid benefits the Sarah Madison file and

Plaintiff properly worked the file when assigned to her **up and until August 23, 1991** under the supervision of Supervisor Whittaker and Defendant King. **On August 23, 1991, the Sarah Madison file was by official Social Services "contact sheet" of the official office of Defendant Director, Ronald L. King, transferred from the Plaintiff to the Defendant, Renee' Woods, as evidenced by Attachment "F,"** which in pertinent part recites **"CASE TRANSFERRED FROM FRENCH TO WOODS G504,"** and here incorporated and made a part of this paragraph. The Supervisors of this file were Defendant King and Supervisor Whittaker. Both Defendants King and Badillo are solely responsible for the supervision of Defendant Renee' Woods to whom the Sarah Madison file had been transferred on August 23, 1991.

17) Plaintiff after August 23, 1991, no

longer worked the Sarah Madison file due to the transfer and not being officially or otherwise Renee' Woods' Supervisor or responsible for her actions as an employee in any manner.

18) Renee' Woods on and after August 23, 1991 was placed in control of and did work the Sarah Madison file under the direct supervision of Defendant Badillo.

19) On August 23, 1991, Plaintiff, who had been transferred previously to "Senior Eligibility Worker" from Eligibility Intake worker, by authority of the Defendant Ronald L. King, saw her duties and responsibilities changed from Medicaid Services Eligibility Worker back to Intake Worker thereby removing her from her previous duties. Plaintiff continued in those duties and responsibilities until her wrongful discharge. At no time after August 23, 1991 was the Plaintiff

responsible for the Sarah Madison file.

20) Preceding all the events recited above, here adopted to this paragraph, the Plaintiff enjoyed throughout her career and in her community a reputable job employment, an excellent reputation, praises from citizens and community groups for her professional and civic work, and high job evaluations. Defendant King has executed as reviewed, her high job evaluations of 1989 and 1991 both of which contain laudatory praise and which acknowledge her excellent work performance. Complaint's Attachments "G" and "H" here incorporated by reference. (As part of this Complaint, Plaintiff shall proffer to the record in these proceedings her entire personnel file to be authenticated by the custodian of personnel records of Caroline County Social Services by this Court's subpoena.)

21) Since 1989 on the arrival of Defendant King, the Plaintiff who had enjoyed a productive and kind working environment for 14 years, did not continue to enjoy the same environment with her new Director, Defendant King. Plaintiff was subject to snubs, silence, and personal reprimands on non-related work issues including but not limited to being forced to give up her voluntary and civic Rescue Squad participation for the community in which she lived because she monitored Rescue Squad calls on her emergency radio at her desk and had done so for years due to the fact the Rescue Squad was an all voluntary group. Defendant King rejected her continuation of her participation and monitoring calls from her job.

22) Defendant King, the Plaintiff here factually asserts, let it be known early in his employment that he wanted all of the <u>older</u>

workers forced out to be replaced by "his team" which included hiring black relatives of various members of county government to promote, Plaintiff alleges, cronyism and blind obedience to the new Director. Defendant King and Defendant Badillo joined hands soon after November 1991 on Defendant Badillo's arrival in attacking long-standing employees. Defendant King has now terminated one senior female worker, caused the resignation of two female workers and he has inflicted a demotion on one other in furtherance of the aforesaid goal.

23) The Sarah Madison file taken from the Plaintiff on August 23, 1991 was followed by her reassignment to other duties and responsibilities thereby removing her from any control of the file and Medicaid eligibility payments. Prior to being relieved of the Sarah Madison file by transferral to Defendant

Renee' Woods whose fiance is a relative of Sarah Madison, the transfer being at the direction and under the authority of Defendant King, the Plaintiff who had worked the file on the first six months of eligibility had dealt with Sarah Madison in good faith through family members who had represented local attorneys had been retained to sell real property of Sarah Madison by a Court appointed guardian.

The Plaintiff was so informed which is confirmed by Complaint Attachment "I," here incorporated by reference. Plaintiff always proceeded under the published guidelines of Medicaid and on these representations and never willfully or intentionally caused Sarah Madison to receive ineligible benefits of Medicaid. Plaintiff maintained regular contact sheets of her dealings with the Sarah Madison family members and her legal

representatives. The Plaintiff here factually asserts that these contact sheets were purged by John Doe(s) obstructing her defense at the Step Three Hearing of August 18, 1992.

24) On or about later February 1992, the Plaintiff learned that Renee' Woods had not worked the eligibility of Sarah Madison since having had the file transferred to Renee Woods by authority and direction of Defendant King. Plaintiff, acting as a good samaritan, volunteered the suggestion to Renee' Woods that she should immediately review and make an eligibility determination.

25) With no notice from Defendant Renee' Woods, Renee' Woods went to Defendant Badillo on April 3, 1992 and then falsely contrived and quibbled to Defendant Badillo that the Plaintiff had made her hide the file transferred to her. Factually and falsely, Renee' Woods represented that the Plaintiff

intimidated her to not disclose the case of Sarah Madison to the Supervisors and to hide the file. Defendant Badillo took Defendant Renee' Woods to Defendant King's office and conducted secret meetings.

26) On or about April 13, 1992, Defendant King called the Plaintiff into his office and told her she was to take 3 days off and to consider the options of retirement or resignation outlining Renee' Woods' charges. Defendant King discussed taking "administrative leave" and had Defendant Badillo in his office to confirm his decision. Plaintiff asked for the specifics to be put in writing and Defendant King refused. Plaintiff reported to work April 14, 1992 and was asked to leave and was told to return in 3 days, April 17, 1992.

27) Plaintiff delivered a letter dated April 13, 1992 to Defendant King memorializing

her "administrative leave" meeting (Complaint Exhibit "D" incorporated by reference) and next contacted Robert Farmer, her representative on the Board of Supervisors, complaining of the unfair treatment which she was receiving as to not being informed of any specific charges. Supervisor Farmer assured her that he would contact the County Attorney and Defendant King.

28) On April 15, 1992, Defendant King called the Plaintiff to set a meeting with her on April 17, 1992 in his offices where she would be presented the written charges.

29) On April 15, 1992, Plaintiff again contacted her Supervisor Robert Farmer telling him of hearsay going around that she would be charged with fraud and Mr. Farmer informed her that he had also been told Plaintiff would be charged with "fraud" and he could not further comment or help that he would be talking with

Mr. King.

30) On April 15, 1992, Plaintiff went to the Caroline County Social Services Board public meeting. The Board went into executive session. On return, Plaintiff was allowed to speak. She denied any wrong-doing and that she had not been informed of any specific wrong-doing although she had been placed on administrative leave without written notification. The Defendant King did nothing.

31) On April 16, 1992, Plaintiff's insurance agent called at home routinely reporting on her policy information and noted that he had been told Plaintiff "no longer worked there," meaning the Caroline Social Services Department.

32) On April 17, 1992, Plaintiff reported to the office at 10:00 a.m. as instructed by Defendant King after three days of administrative leave.

33) At 10:15 a.m. on April 17, 1992, Plaintiff was called into Defendant King's office with Cynthia Greene, a Service Supervisor and Defendant Badillo. Defendant King presented Plaintiff with the "Written Notice" executed by Defendant Badillo, (Complaint Attachment "A"), terminating her 16 years of employment effective April 17, 1992. Plaintiff to this moment was a vested non-probationary employee with excellent evaluations.

34) Plaintiff again on April 20, 1992 met with her Board of Supervisors representative, Mr. Farmer to inform him of what had just transpired. It was recommended that she file a grievance.

35) Plaintiff timely lodged her grievance. On May 7, 1992 before Defendant Blanche A. Badillo, Plaintiff made an oral presentation to deny the "written notice"

executed by Defendant Badillo. Defendant Badillo added infractions #7, 8, 9, 10, and 14 (Complaint Exhibit "E" here incorporated by reference) and summarily dismissed the Plaintiff's oral presentation that no "new information" was provided "that would change the circumstances of dismissal" even though Plaintiff noted the Sarah Madison file was transferred **to Defendant Renee' Woods by Defendant King and Defendant Woods' file was under his control and supervision.** Plaintiff denied Renee' Woods' representations as both false, scandalous and contrived. Factually, at no time in this process at Step One did Defendant Badillo produce not the first witness, accuser, nor the first document of proof or provide Plaintiff with any statement of Renee' Woods.

36) Following the state grievance procedure process, Plaintiff thereafter

perfected her appeal from First Step within five days submitting on May 15, 1992 her appeal to a Second Step meeting with Defendant King which by agreement was set for May 26, 1992. On May 29, 1992, Defendant King made an identical finding and Plaintiff noted her objection and advanced to Third Step, executed June 2, 1992. At no time in the Step Two process was the Plaintiff confronted with witnesses, an accuser, the first document, or the statement of Renee' Woods.

37) Within 5 working days of Defendant King's response in the Second Step, Plaintiff appealed to the Third Step, to the Agency Head, the Caroline County Board of Social Services. The Board set the hearing for June 17, 1992 at 7:00 p.m.

38) Pursuant to the procedures of the Third Step (Page 5 of the State Grievance process), the Plaintiff's rights are in a

procedural and substantive due process context verbatim outlined:

> THIRD STEP
>
> ... The Employee must submit Form A to the Third Step respondent within 5 work days of receipt of the Second Step respondents' reply.
>
> ... The Third Step respondent shall meet with the employee within 5 work days following receipt of Form A. The persons present at this meeting are the employee, the Third Step respondent, and, at the employee's option, a representative of his choice. If the employee is represented by legal counsel, management likewise has the option of having legal representation. Appropriate witnesses may be called and may remain in the room only while giving testimony.

39) On June 11, 1992, by letter of her "representative," an attorney, (Complaint Attachment "J," here incorporated by reference), the Department of Social Services, the Chairman of the Social Services Board, Defendant Ken Davis, Board of Supervisor Farmer, and County Attorney, Jean Kelly, Esq., were all notified that Plaintiff had retained legal counsel for the scheduled Board meeting to be mandatorily held within 5 days pursuant to state procedures on June 17, 1992 at 7:00 p.m.. The Plaintiff's personnel file and all documentations were requested.

40) All of the Defendants failed to respond and provided nothing as requested to the Plaintiff or her counsel.

41) Plaintiff with her counsel and a Court reporter appeared at the Caroline County Social Service Board hearing room on June 17, 1992 at 7:00 p.m.. The Court reporter was

denied access. In the room sat Defendant King and the Board. The Board went into executive session on seeing Plaintiff and her counsel. On adjournment, the Board announced it refused to proceed with Plaintiff's grievance without the County Attorney present.

42) The Plaintiff through counsel made strenuous objection and noted her exceptions, the Plaintiff declaring her rights were being violated and more specifically including but not limited to denial of due process in the taking of a property interest, viz. her job. The Defendant Board did provide a review of Plaintiff's personnel file which was asked to be copied and presented to the Plaintiff which did not occur.

43) The Chairman of the Board suggested a new date would be set after they consulted with the County Attorney, Jeane Kelly. No show of cause was made by the Board as to why

the Board did not respond to counsel's notification of the Plaintiff's representation of legal counsel nor did the County Attorney respond nor did any member of the Baord respond to legal counsel's notice.

44) Over the continuing objection of the Plaintiff reserving all rights, the Board set in conjunction with legal counsel an August 18, 1992 hearing date. The Board retained Albert J. Lilly, Jr., as their counsel, who was not "the counsel" the Board represented on June 17, 1992 to the Plaintiff as their legal representative whom they wanted present, the County Attorney being the announced preference. Over the strong objections of the Plaintiff, for that reason alone the June 17, 1992 meeting was adjourned.

45) The Plaintiff with the assistance of counsel filed with the Chairman of the Board all of her legal objections and demands

for reinstatement and expungement by letter dated July 22, 1992 with copies to Defendant King, the Board members, her counsel, Supervisor Farmer, and to Albert J. Lilly, Esq.. (Complaint Exhibit "J-1" here incorporated by reference to this paragraph.) No response was ever made by any of the Defendants who entirely ignored the letter.

46) Prior to the August 18, 1992 hearing, Plaintiff through counsel sought to obtain pertinent and relevant documents for Plaintiff's defense preparation at Step Three, to copy her personnel file, and to have access to the file in question as well as other specifics and to interview witnesses before August 18, 1992. All of the above efforts were continually denied and obstructed by all the Defendants and by John Doe(s).

47) Readopting the above paragraph, the Defendants by their privately retained counsel

on August 10, 1992, Albert J. Lilly, Jr., responded at the direction of his clients, the Defendants, to the Plaintiff's requests denying to counsel for the Plaintiff access to witnesses and documents, here reprinted verbatim:

"August 10, 1992

John F. Ames, Esquire
Hubard, Samuels & Ames, P.C.
1205 East Main Street, Fourth Floor
Richmond, Virginia 23219

Reference: Grievance/French

Dear Mr. Ames:

This is in reply to your letter dated August 6, 1992.

1. Except as required by the applicable Employee Grievance Procedure and other than your client's personnel file, you will not be provided any documentation nor will you be permitted access to the

same.

2. You do not have permission to talk to or with any employee of the Caroline County Department of Social Services in regard to the grievance of your client or any matter related to your client.

3. I expect the letter of Mr. Dick dated July 31, 1992, addressed to me, to be discussed by the Board of Social Services at its first meeting following receipt of that letter, that is, on August 18, 1992.

4. The Third Step Procedure has been and is set for August 18, 1992, at 6:00 p.m., as you are aware.

Very truly yours,

Albert J. Lilly, Jr.

AJLjr/sds

cc: Mr. Ronald L. King, Director
Department of Social Services

(w/enclo.)"

48) The Defendants represented through counsel Albert J. Lilly, Jr. their position to not disclose or provide documents or witnesses which position Defendants represented was made in reliance of consultations with the Department of Employees Relations Counselors, Phyllis Katz.

49) Re-adopting the paragraph above, as an example of Plaintiff's factual assertions of obstruction of her rights, the Defendant King present at the August 18, 1992 Board hearing scheduled for the Plaintiff, Defendant King was sitting in the room at a Third Step hearing before the Agency Head and nevertheless absolutely refused to testify as a witness in any manner and based his decision in part on the representation that he had relied on the Department of Employee Relations, Phyllis Katz. Counsel Lilly made

no legal advice to Defendant King to testify or not to testify. At that moment the Plaintiff objected to Defendant King's refusal to testify as a called witness, and, noted to the Defendant Board members that they had a duty under statutory, regulatory, and case law to allow the Plaintiff to call witnesses and as the Agency Head that they had to command in a Step Three procedural process Defendant King to testify which the Defendant Board members absolutely refused to do. The Defendants were read excerpts from the Fourth Circuit decision of Detweiler v. Commonwealth of Virginia 705 F.2d. 357 (1983) defining constitutional guarantees, yet the Defendant Board members remained resolved in their decision to not require Defendant King to testify.

50) As a further example of the factual obstruction of the Plaintiff's rights, Defendant King issued a memorandum (Complaint

Exhibit "K" here adopted and incorporated by reference) to his employees commanding them to not converse with Mrs. French or her counsel without the Department's representative upon which penalty of immediate disciplinary action. The Department's representative had refused to allow any such interview as noted above.

51) The Defendants' private counsel Albert J. Lilly on August 17, 1992 was persuaded by Plaintiff's co-counsel to produce documents based on the Detweiler case and to allow witnesses to be interviewed after consultation with Phyllis Katz of the Department of Employees Relations. However, this concession became futile as the Defendants through their counsel finally produced a set of documents only one to two hours before the August 18, 1992 Board scheduled hearing at Step Three. No witnesses

were ever made avilable or could be made available or be called under the extreme circumstances of the last minute concession. Moreover, frustrating the rights of the Plaintiff further, the documents produced by the Defendant King demonstrated that the Sarah Madison file had been purged of material and relevant documents including but not limited to Plaintiff's contact sheets and file history. The Plaintiff's personnel file was never produced.

The only key document in the Madison file not purged was the contact sheet (Complaint Exhibit "F" here incorporated) which demonstrated the file was the sole responsibility of Defendant Renee' Woods, a material fact recited by the Plaintiff in her Step Three hearing, and a document made available to the Board of Social Services members which the board entirely ignored in

sustaining Defendant King's decision to discharge the Plaintiff.

52) Further factually, and asserted as evidence that Defendant King sought to prejudice and harm the Plaintiff, Defendant King, and John Doe, had placed King's letter to Larry Mason of a state agency and a state agency report and correspondence into the same file presented to the Plaintiff by the Defendants for the August 18, 1992 hearing which report was **presented to the Board members prior** to the scheduled hearing from which file multiple unfounded inferences of infamous crimes were arbitrarily made pointing accusatory and scandalous criminal conduct attributable to the Plaintiff without presentment or indictment and all the same being orchestrated by a single letter of Ronald L. King, dated June 25, 1992, eight days after the cancelled June 17, 1992 Board

hearing, Complaint Exhibit "L" here printed verbatim:

"June 25, 1992

Mr. Larry Mason

Welfare Division Director

8007 Discovery Drive

Blair Building, Suite 216

Richmond, VA 23229-8699

Dear Larry:

Enclosed you will find narrative information concerning an eligibility/ Medicaid case that we believe was approved fraudulently by and eligibility worker. We believe that the eligibility worker attempted to hide this case from the unit supervisor in an attempt to keep the case eligible.

We feel that this worker should be prosecuted, but are unsure of the appropriate charges. Please review the

information and advise us how we should proceed.

If you have any questions or need additional information please contact me.

Sincerely,

Ronald L. King

Director

RK/mb"

53) Adopting here all of the above paragraphs and the exhibits to this Complaint, having noted and reserved her objections, having a Court Reporter to record those objections on August 18, 1992 and to be submitted by the Plaintiff on her motion for summary judgment, the Plaintiff with the factual assertions of obstruction of her rights and the Defendant Board having in hand the initiated June 25, 1992 investigation state agency report, the Plaintiff was

severely subject to this bias and prejudice effected upon her by the aforesaid reports and letters to which she was not privy nor had any prior notice of in order to be able to meaningfully defend being thereupon denied due process and notice of the charges before the sitting Defendant Board members in a Star Chamber setting so above described.

54) The Plaintiff in her Step Three presentation categorically denied all the charges against her and repeatedly stated that the Sarah Madison file was not her assigned file, but rather it was the file transferred and assigned to Defendant Renee' Woods under the direction and control of Defendant King.

COUNT ONE

(ALL CONSTITUTIONAL RIGHTS VIOLATION/STAY)

COMES NOW, the Plaintiff by counsel, who adopts and incorporates paragraphs 1-54 above and the Complaint Exhibits, and the Court is

hereby requested to make findings of fact and law by declaratory judgment of an actual controversy related to alleged constitutional violations; to grant a stay on all further state grievance proceedings pending the decision of this Court is hereby requested; and in support of Count One, the Plaintiff does state as follows:

1) Defendants King and Badillo violated Plaintiff's constitutional rights to due process procedurally and substantively under the Plaintiff's Fifth, Sixth, and Fourteenth Amendments Rights, to wit:

(a) Defendant Badillo issued a "written notice" with no specificity of charges and offered no proof or other documents to the Plaintiff in Step One while publicating also that the Plaintiff was guilty of an infamous crime without presentment or indictment and compelling

Plaintiff to be a witness against herself, the said Defendant did all such acts and omissions negligently and/or willfully and intentionally in bad faith for the purpose of harming the Plaintiff by terminating and taking her job without due process in a futile and meaningless exercise of a state grievance process which procedures were also violated to further the Defendants' wrongful purposes of discrediting and accusing the Plaintiff of infamous crimes and thereby did deprive and slander Plaintiff's good name thereby depriving the Plaintiff of her liberty interest under the Fourteenth Amendment.

(b) The Plaintiff here adopts subparagraph (a) above and alleges the same constitutional deprivations against Defendant King at Step Two of the state

grievance process.

2) The Plaintiff further alleges against Defendant John Doe(s) that he or she joined Defendants King and Badillo to negligently and/or willfully and intentionally in bad faith violate the Plaintiff's aforesaid constitutional rights at Steps One, Two, and Three of the state grievance process.

3) The Plaintiff further alleges that the substantive due process clause was violated, viz., fundamental fairness, to have perpetrated such blatant disregard for the Plaintiff's rights by reason of malice, bad faith, and ill will. Defendants King, Badillo, John Doe(s) and Renèe' Woods entered into a combination of purpose and common law conspiracy to maliciously, purposely, intentionally, and willfully violate Plaintiff's constitutional rights for their own unlawful motives and improper purposes in

violation of 17 USC §242. Plaintiff asserts this claim for purposes of imposing punitive damages.

4) Plaintiff alleges that Defendant King violated Plaintiff's due process rights under the Fifth and Fourteenth Amendments by issuing a directive, written and verbal, and by other means including but not limited to threats and intimidation to material witnesses to not respond to Plaintiff or her counsel's interviews, questions, or factual investigation of unspecified charges leading to the "written notice" up and through Step Three of the state grievance process to which rights the Plaintiff by law was entitled.

5) The Plaintiff alleges that Defendants King, Badillo, and John Doe(s) did wrongfully and improperly refuse the production of documents relative to the Plaintiff's defense at Step Three and on a

production of documents at the last hour before Step Three on August 18, 1992, did similarly purge the Caroline County Social Services/Sarah Madison Medicaid history file of pertinent and material documents relevant to the defense of the Plaintiff at Step Three, thereby willfully and intentionally violating the Plaintiff's due process rights to a fair and impartial grievance procedure under the Fifth and Fourteenth Amendments of the United States Constitution and, by the totality of the circumstances, violating the substantive due process clause by violating fundamental fairness to have perpetrated such a blatant, reckless and total disregard for the Plaintiff's rights by reason of malice, bad faith, and ill will practiced upon the Plaintiff by policy, custom, and usage condoned and ratified by the Defendant Social Services Board and the Defendant County.

6) Readopting paragraph #5, the said Defendants also denied to the Plaintiff in violation of the due process clauses of the Fifth and Fourteenth Amendments in taking Plaintiff's job the right to interview and to call witnesses in her state grievance process at the Step Three level. Defendant King exacerbated the continuing violation of the aforesaid Plaintiff's rights by refusing to testify as a called witness under the Step Three procedure.

7) Defendant King further violated the aforesaid rights under the Fifth, Sixth, and Fourteenth Amendments by accusing the Plaintiff of infamous crimes before Larry Mason, the Caroline County Social Services Board, and John Doe(s), all who acquiesced and ratified the same, without an indictment or information, in the state grievance process when the Plaintiff was given "written notice"

of charges unspecified as the same pertained only to the Sarah Madison file.

8) The Defendant Board members, namely Defendants Davis, Taylor, Fields, Murray, Carter, Jeter, negligently and or willfully and intentionally by policy, custom, or usage, improperly and wrongly disregarded their independent judgment violating their oaths, and did abdicate their duties and did submit to the will and wrongful conduct of Defendant King, their Director, with total and reckless disregard for fundamental fairness and due process guaranteed to the Plaintiff in violation of her constitutional rights and in violation of the state grievance process procedure, and did among other acts and omissions in their charged duties and responsibilities but not limited to:

(a) Refuse to allow the Plaintiff to call witnesses at Step Three, namely and

not limited to, Defendant Ronald King.

(b) Failed to proceed with the June 17, 1992 scheduled meeting after receiving adequate notice that Plaintiff would be represented by legal counsel.

(c) Failed to provide as required of its staff and Director the requested documents for Step Three.

(d) Having in their hands Complaint Exhibit "F" from the Sarah Madison file that clearly and decisively showed that file to have been transferred to Defendant Renee' Woods under the direct supervision of Defendant King which made the "Written Notice," charge #1, legally incorrect as a matter of law and fact.

(e) Adopting subparagraph (d) above, the Defendant Board members in not hearing a single witness before the Board against the Plaintiff other than

the Plaintiff who gave the only evidence and categorically denied all infractions while repeatedly pointing out, even under rigorous questioning, that the file was transferred from her to Defendant Woods by official record of the Sarah Madison file, nonetheless, denied the Plaintiff her due process by willfully acting contrary to the uncontradicted and undisputed proof of no-wrong doing of the Plaintiff and thereby sustaining their Director as to hs unlawful discharge. In so doing, the Defendant Board members violated the Plaintiff's fundamental right to a fair and impartial hearing under the substantive due process clause and the equal protection clause.

(f) Adopting subparagraphs (d) and (e) above, the Defendant Board members did

negligently, recklessly, and or intentionally or willfully by policy, custom, and usage review with NOTICE to the Plaintiff before Step Three, documents that alleged non-charged data promulgated by Defendants King and John Doe(s) that accused the Plaintiff of infamous crimes without presentment, information, or confronting the Plaintiff with her accusers in violation of due process under the Fifth, Sixth, and Fourteenth Amendments and in violation of her state grievance procedure rights, and thereby did give unfounded credence and utility to spurious, scandalous, and unproven criminal innuendoes to support their decision as a Board or individually to wrongly and unlawfully sustain the Plaintiff's termination of her job.

9) The Plaintiff alleges further that the Defendant Caroline County by its Board of Supervisors have by policy, custom, and usage, condoned, ratified, and supported its Defendant Board of Social Services and its staff's blatant violations of the constitutional rights of the Plaintiff and supported the Defendant King and John Doe(s) in all of the above recited impermissible constitutional infringements.

(10) Adopting all of the above paragraphs, all wrongful acts and omissions of the named Defendants were consummated under the colour of state law in the Defendants' self-created Star Chamber atmosphere of intrigue, innuendo, and scandal, and all of the Defendants collectively and or in combination did violate the Plaintiff's liberty interest protected by the Fourteenth Amendment, viz., Marcia S. French's good name

in her community was severely damaged, by circulating, publicating, and ratifying and endorsing in and outside the hallways of government scandalous, spurious, and unfounded charges of infamous crimes without presentment or indictment while violating her right to procedural and substantive due process of law in her Step Three grievance process.

11) All the Defendants, jointly and severally, and or by singular or combination of purpose, had a duty to not violate the Plaintiff's constitutional rights for improper purposes by adherence to controlling regulatory, statutory, and constitutional case law and the Defendants knew or should have known that their policy, custom, and usage would by their acts and omissions violate the aforesaid constitutional rights of the Plaintiff even with having had the means and availability of advice of counsel.

12) Adopting all paragraphs above and under pendant jurisdiction, all the Defendants, jointly and severally, by their acts and omissions, did violate the Plaintiff's Bill of Rights under the Virginia Constitution, §§1, 7, and 11.

13) As a direct and proximate result of the aforesaid wrongful and unlawful conduct of all of the Defendants, jointly and severally, and or singularly or in combination of purpose, the Plaintiff has been by said acts and omissions severely damaged by loss of wages, benefits, position, reputation, and being greatly aggrieved, mortified, humiliated, embarrassed, and mentally abused for which she seeks declaratory, injunctive, all equitable remedies and monetary relief, her attorney fees and costs. In her prayer of relief below, the Plaintiff seeks both compensatory and punitive damages and demands

a jury trial.

COUNT TWO

(REVERSE DISCRIMINATION IN VIOLATION OF 42 U.S.C. §1981)

[DELETED]

COUNT THREE

(AGE DISCRIMINATION)

[DELETED]

COUNT FOUR

(STATE PENDANT CLAIMS)

(JURY TRIAL DEMANDED)

COMES NOW the Plaintiff, by counsel, adopting paragraphs 1-54 with exhibits for each of the Counts below who for her state pendant claims she does state as follows:

A. Fraud and Deceit

1) Defendants King, Badillo, and Woods,

did willfully, intentionally, and falsely accuse under the "Written Notice" and by Renee' Woods's published statement arising out of the same at Defendants King and Badillo's bidding in a fraud and deceit, that Plaintiff was responsible for an ineligible file in violation of law, viz., the Sarah Madison file was kept open while Sarah Madison was ineligible.

2) Defendant King had re-assigned and transferred the file to Defendant Renee' Woods on August 23, 1991, an existing fact known or that should have been known by the aforesaid Defendants, thereby making the Plaintiff not responsible for the said file.

3) The Plaintiff relied on the truthful representation of the Defendant King, imputable to Badillo and Woods, that the Sarah Madison file had been so assigned and transferred to Renee' Woods and therefore the

file was not the Plaintiff's responsibility.

4) The Defendants, Plaintiff adopting paragraphs 1-3 above, had a duty to not willfully, intentionally, and falsely represent to any third party that the Plaintiff was responsible for the Sarah Madison file as the Plaintiff acted accordingly in reliance of the representation of Defendant King.

5) The Defendants breached that duty and did willfully, intentionally, and falsely represent to the Board of Social Services that the Plaintiff was responsible for the Sarah Madison file and that the Plaintiff had caused Defendant Renee' Woods to "hide" the file when Sarah Madison was ineligible, the latter being a false, material and relevant representation.

6) Adopting paragraphs 1-5 above, the Defendants directly and proximately by their recklessness, fraudulent and false conduct and

utterances did cause the Plaintiff to be personally harmed as to her name, reputation, and job and to suffer great embarrassment and mental anguish.

7) The Plaintiff was thereby damaged losing her job, wages, benefits, and her good name.

8) Plaintiff prays that the Court and jury adopt as damages the Prayer for Relief paragraph #7 below, here incorporated, and requests the judgment to be imposed jointly and severally upon the same Defendants.

B. <u>Slander and Libel</u>

1) The Defendants King and John Doe(s) did publish and publicated willfully, intentionally, and recklessly false and scandalous utterances to third parties that the Plaintiff was guilty of infamous crimes, viz., criminal fraud adversely affecting her job and name in her community, being

negligence and slanderous per se.

2) The Defendant King has a duty to not publish wrongful and scandalous utterances to third parties that the Plaintiff was guilty of infamous crimes against the Plaintiff that adversely and negligently affected her good name in the community and job.

3) The Plaintiff at all times when such falsehoods were uttered enjoyed an excellent reputation in her community and in her workplace, and, as a direct and proximate cause of the aforesaid false publications to third parties, viz., but not limited to the Board of Social Services, the Plaintiff's good name and reputation in her community have been harmed and the Plaintiff has been greatly humiliated, mortified, embarrassed, and has suffered anxiety and low self-esteem.

4) Plaintiff adopts paragraph #7 of her Prayer for Relief for damages to be awarded,

here incorporated, and requests the judgment to be imposed jointly and severally upon the same defendants.

PRAYER AND RELIEF

1) Plaintiff prays that the Court effect by Order restoration of all of her rights, privileges, and immunities by a declaratory judgment on a finding of fact and law by the Court that the Plaintiff's constitutional rights have been violated.

2) Plaintiff prays for temporary and permanent injunctive relief to prohibit present or future violations of all of her constitutional rights by the defendants.

3) Plaintiff prays for reinstatement of her job as Senior Eligibility Worker with back wages, benefits, and all privileges and then to be allowed to resign with an expungement of the false charges made against her.

4) **[DELETED]**

5) Plaintiff prays for an award to all federal counts, for compensatory damages and on her constitutional claims of violations, the amount of $250,000.00; and for the intentional wrongs perpetrated by the individual Defendants, Two and One Half Million Dollars in punitive damages, her costs and attorney fees.

6) **[DELETED]**

7) **[DELETED]**

8) Plaintiff prays for such other and further relief as may be just and proper.

9) Plaintiff as to all Counts, except the state pendant claims, prays that she be awarded her attorney fees allowed by federal law and state law, her expenses, and costs.

AFFIDAVIT

I, Marcia S. French did before a Notary

Public, swear that this Complaint as to its factual recitals are true and correct to the best of my knowledge and belief.

GIVEN UNDER MY HAND this 9th day of September 1992.

(s) Marcia S. French

MARCIA S. FRENCH

NOTARY

VIRGINIA: AT LARGE

Marcia S. French did appear before me this 9th day of September 1992 and did swear that her Complaint as to its recitals are true and correct to the best of her knowledge and belief.

My Commission expires: 4-30-94 .

(s) Belina G. Pillsbury

NOTARY PUBLIC

By: (s) J. Benjamin Dick

J. BENJAMIN DICK

Counsel for the Plaintiff
Law Offices of J. Benjamin Dick
421 Park Street, Suite #2
Charlottesville, VA 22902
(804) 977-6607

(s) John F. Ames

JOHN F. AMES
Co-Counsel for the Plaintiff
Hubard, Samuels, & Ames, P.C.
1205 E. Main Street
4th Floor, West
Richmond, VA 23219
(804) 648-9255

Attachment A

WRITTEN NOTICE

Section I

Employee's Name Marcia French

Date of Offense 04-03-92

Agency Caroline County Dept. of Social Servs.

Date of Issuance 04-17-92

Supervisor's Signature (s) Blanche A. Badillo

This notice will become inactive 04-17-92

Section II

Type of Offense: (Check one)

Group I _____ Group II _____ Group III X

Nature of Offense and Evidence: (Describe briefly the offense and give an explanation of the evidence).

1, Gross neglect and continued neglect of duties, allowing an ineligible case to remain open. 2, Actively seeking the ineligible case out and instructing a subordinate employee to hide the case record from supervisor because case was ineligible and supervisor would close

case. 3, Intimidating, coercing an employee. Mrs. French has stated that she allowed the ineligible case to remain open for 18 months knowing that the case was ineligible. Mrs. French has stated that she removed the case from another worker's file and told her to hide it and not show it to the Supervisor.

Section III

Disciplinary Action in addition to written notice: Removal April 17, 1992 Due to [Termination]

/s/ Blanche Badillo

Attachment H

Caroline County Department of Social Services

June 25, 1992

Mr. Larry Mason

Welfare Division Director

8007 Discovery Drive

Blair Building, Suite 216

Richmond, Va. 23229-8699

Dear Larry:

Enclosed you will find narrative information concerning an eligibility/Medicaid case that we believe was approved fraudulently by an eligibility worker. We believe that the eligibility worker attempted to hide this case from the unit supervisor in an attempt to keep the case eligible.

We feel that this worker should be prosecuted, but are unsure of the appropriate charges. Please review the information and advise us how we should proceed.

If you have any questions or need additional

information please contact me.

Sincerely,

(s) Ronald L. King

Ronald L. King

Director

RK/mb

EMPLOYEE PERFORMANCE EVALUATION

Agency Name: Caroline Dept. of Social Services

Name: Marcia S. French S.S.No.: 579-44-3177

Class Title: Senior Eligibility Worker

Class Code: 05010 Date entered present position: 10-01-86 Period covered by evaluation: From 050190 to 043091

Reason for review: Other -- Merit Increase

Satisfactory = 4,5,6; More than satis. = 7,8

PART I.

1. KNOWLEDGE & INTERPRETATION OF POLICIES & PROCEDURES. Knowledge of programs sufficient to advise telephone and in-office inquiries [on] possible eligibility; sufficient to assist in training and answering questions [by] new eligibility workers; sufficient to address other groups & organizations about eligibility programs; sufficient to attend training on program changes and return to the agency and explain those changes to other

eligibility staff. (Quality=7; Quantity=7)

2. EFFECTIVE COMMUNICATION. Ability to question clients in several different ways to get the most accurate information; ability to work with hostile clients without become hostile in return; ability to be sympathetic but objective about clients' problems; ability to design agency forms and letters when necessary; ability to document case records to give accurate description of clients' circumstances. (Quality=6; Quantity=6)

3. MANAGEMENT AND COVERAGE OF CASELOAD. Ability to organize workload and re-arrange schedule to fill in when there is a vacancy or a member of the eligibility staff is out temporarily; ability to manage own caseload as well as checking work of other assigned worker(s). (Quality=7; Quantity=7)

4. SUPERVISION. Ability to assist in training new eligibility workers; ability to

interpret policy and answer questions of ongoing workers; ability to attend training [on] program changes and return to the agency and explain those changes to other eligibility staff; ability to review and critique work of eligibility workers. (Quality=6; Quantity=6)

5. WORKER SPECIFIC. Ability to review bills on SPEND-DOWN cases [with-in 8 days of receipt] and notify client of eligibility or remaining spend-down amount.

[Quality total = 32; Quantity total = 32]

(Enter total in part III to calculate overall score.)

PART II.

Evaluate employee's conduct in each area. Use numerical scale provided in Part I.

1. Reliability - 8.
2. Working Relationships - 8.
3. Observance of Departmental Rules, Regulations and Policies - 8.

4. Attendance - 8.

TOTAL = 32 (Enter total in part III to calculate overall score.)

PART III.

Overall evaluation of employee

Quality of work 32 / 5 = 6.4

Quantity of work 32 / 5 = 6.4

Conduct 32 / 4 = 8.0

TOTAL 20.8 / 3 = 6.93

Recommendation: Merit Increase

COMMENTS. Mrs. French carries an ongoing caseload of Auxiliary Grants; SLH; GR; Medicaid: Nursing Home, Medically Indigent-PG, QMB & Spend-Downs. She does the initial eligibility decision on all the Medicaid, SLH, GR, & Auxiliary Grant cases. Those that are not in her caseload are passed on to the ongoing Medicaid worker after approval. She is back-up for the Intake workers when needed and has supervisory responsibilities in the

absence of the Eligibility Supervisor. She reviews the work of the ongoing Medicaid worker & assists workers w/Medicaid questions. She assisted with the Energy Assistance Program in 1990-91.

In addition to the above, for 3 1/2 months in 1990, Mrs. French worked on a special Community Services Board/DSS project. She took Medicaid applications throughout Planning District 16 and made the initial eligibility determination before forwarding the case to the appropriate locality. During this project she worked with the RCSB as well as other local DSS agencies. [We] received phone calls from staff members of the other agencies commending the good job she had done. Mrs. French is an excellent worker and an asset to the agency.

EVALUATOR: (s) Cynthia B. Whittaker 05/21/91

REVIEWER: (s) Ronald L. King 05/31/91

SIGN. OF EMPLOYEE: (s) Marcia French 06/07/91

Attachment J-1

Law Offices

Hubard, Samuels & Ames, P.C.

A Professional Corporation

1205 East Main Street

Fourth Floor

Richmond, Virginia 23219

June 11, 1992

Department of Social Services

Caroline County

P.O. Box 430

Bowling Green, VA 22427

RE: Grievance, personal matter for Marcia S. French

Gentlemen:

This is to inform you that Mrs. French has retained J. Benjamin Dick, Esq., 421 Park Street, Suite 2, Charlottesville, Virginia, 804-977-6077, and me to represent her in this matter. We will be appearing with her before

the social services board which is now scheduled for 7:00 p.m. June 17, 1992. Mr. Dick and I are co-counsel.

I would appreciate you contacting me so that I may review her personnel file in advance of that meeting. I would also appreciate you providing to me any and all documentation pertaining to or relating to this case.

Thank you very much for your attention to this matter.

Very truly yours,

(s) John F. Ames

John F. Ames

JFA/kww

cc: Marcia S. French

J. Benjamin Dick, Esquire

Jean Kelly, Esquire

Mr. Robert Farmer

Mr. Ken Davis, Chairman Social Service

Board

Attachment L

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARCIA S. FRENCH,

Plaintiff,

v. **Case No: 3:92CV585**

RONALD L. KING, et al.

Defendants.

Affidavit of Ronald L.King

Ronald L. King appeared and said the following as his affidavit in this matter:

1. My name is Ronald L. King. I am the Director of the Department of Social Services for Caroline County, Virginia ("the Department"). I assumed my position three and one half years ago after working in other social service departments.

2. The Board of Social Services is the body which oversees the Department. On my recommendation, in April of this year, the

Bcard voted to terminate the employment of the plaintiff, Marcia S. French.

3. [Deleted]

4. [Deleted]

5. [Deleted]

6. [Deleted]

7. [Deleted]

8. [Deleted]

9. Later that week on April 15, the Board of Social Services met for its regular monthly meeting. At the meeting, the plaintiff spoke to the Board and explained her position. I recommended her dismissal, and the Board voted to terminate her employment.

10. [Deleted]

11. [Deleted]

12. [Deleted]

13. [Deleted]

14. [Deleted]

15. [Deleted]

16. [Deleted]

(s) Ronald L. King

COMMONWEALTH OF VIRGINIA

COUNTY OF CAROLINE, to wit:

This 2nd day of October, 1992, appeared before me Ronald L. King, who swore that the foregoing affidavit was true to the best of his knowledge and belief.

(s) Mary L---- Benner

Notary Public

My commission expires 8 31 94.

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

(AT RICHMOND)

MARCIA S. FRENCH,

Plaintiff,

v.

RONALD L. KING, ET. AL.,

Defendants.

AFFIDAVIT OF COLONEL HARRY W. FRENCH

I, HARRY W. FRENCH, SSN 579 24 5386, Colonel, U.S. Army, Retired, do swear to the following facts as being true to the best of my knowledge and belief:

1) I am a retiree from the U.S. Army and now live with my wife in Caroline County, Virginia. Our house is a two level house with the lower level opening onto a patio. I spend much of my free time in the lower level of the house.

2) During the last week of June 1992, I received an unexpected visitor, Ms. Renee' Woods, who had a direct involvement in the recent happenings to my wife. She is no stranger as we have socialized.

3) On that afternoon, June 23, 1992, I was in the lower level of the house reading when I heard someone calling me. Going to the patio door, I saw Renee' Woods. I was surprised because of the trouble my wife had had at the office since April 1992 and the part that Renee' Woods played in those problems. These thoughts were running through my mind when I saw her.

4) When I opened the door Ms. Woods expressed her concern and asked if Sunny (my wife's nickname) is home and I told her no. She said she was there to see me.

5) Ms. Woods stated to me the Director King had forbidden her from talking to Sunny.

She went on to say that she was really here to talk with me so to tell me of the true happening of what had taken place in the office that was responsible for my wife's troubles.

6) [Deleted]

7) [Deleted]

8) [Deleted]

9) [Deleted]

10) [Deleted]

11) [Deleted]

12) [Deleted]

13) [Deleted]

14) [Deleted]

15) Using this as an introduction, Ms. Woods next began to tell me what had happened at the office that led to my wife being fired. I decided to take contemporaneous notes, something I learned in the army for my own reference and I did so.

16) Ms. Renee' Woods related that after normal business hours on Friday, April 3, 1992, she and Mrs. Badillo were working overtime in Woods' office. Mrs. Badillo was sitting at Ms. Woods' desk. While working and talking, Mrs. Badillo opened one of Woods' desk drawer and found a Medicaid case folder that was overdue for action. Ms. Woods told me it was the "Sarah Madison File." Mrs. Badillo asked Ms. Woods why that case was in Ms. Woods' desk drawer. Ms. Woods explained to Mrs. Badillo that the case was assigned to her on August 21, 1991 and overdue for review. Ms. Woods stated to me that she told Mrs. Badillo that Mrs. French had found it in the file cabinet and that "Sunny" had told Ms. Woods that she really needed to do something with the case. Ms. Woods had the case file in her drawer for about two (2) weeks after that helpful suggestion but Ms. Woods had not yet

done anything on the case she said when Mrs. Badillo collared her.

17) Ms. Woods stated that Mrs. Badillo commented that this was "fraud" and she told Ms. Woods that she and Mrs. French were in serious trouble. Mrs. Badillo also told Ms. Woods that she had to take the case to Mr. King because of the serious situation that Ms. Woods was now in because of the discovery of this ineligible case file in her desk drawer.

18) I asked categorically of Ms. Woods whether or not this case was one of the cases that she had been responsible for since my wife (Mrs. French) had stopped handling medicaid cases in August of 1991 at Mr. King's direction and thereafter assigned Mrs. French to do "intake" only.

19) Ms. Woods replied that "YES" it was one of those cases and that Mrs. French told her then that the case needed to be done and

to act on it.

20) When I asked her, knowing full well the principle of the chain-of-command, how could it then be required of my wife to be involved as she was by all of the events and current dispute since April 1992 when she was reassigned to do "Intake" work last August 1991 and hadn't work the file.

21) [Deleted]

22) Ms. Woods said Mrs. French only remarked on seeing the file that the case should be completed and finished as soon as possible before Mrs. Badillo finds it and gets mad at her for not working the case.

23) My comment to Ms. Woods was that Mrs. Badillo obviously did get upset when she discovered the case still uncompleted by helping to fire my wife from a job she held for over 16 years. Ms. Woods agreed, and, said that because Mrs. Badillo was upset, that

she insisted she had to see Mr. King on the 6th of April 1992.

24) On April 6, 1992 Ms. Woods explained to me that Mr. King met with her and Ms. Woods gave her version of what had happened to this case.

25) Ms. Woods said, Mr. King started talking about Mrs. French badly and that she had intimidated me. Ms. Woods said to Mr. King and I quote: "I told him that no woman except my mother ever intimidated me and that I have more respect for Sunny [Mrs. French] than anyone else in the Agency."

26) Next Ms. Woods said that Mr. King proceeded to "put words in my mouth" about Mrs. French doing wrong things and stretched what had occurred demanding she sign a statement which she did at Mr. King's direction. Ms. Woods reminded Mr. King that she and Mrs. French were to go for four days

of training the very next day. Ms. Woods stated she asked that Mr. King not say anything to Mrs. French about what had been discussed until the following week. Ms. Woods stated that Mr. King agreed to wait until their return before confronting Mrs. French about the case. Ms. Woods left Mr. King's office and Mrs. French asked about the reason for her being at King's office and Ms. Woods told me that she told Mrs. French that Mr. King "talked about her attitude." Renee' Woods next told me the true reason.

27) [Deleted]

28) [Deleted]

29) Ms. Woods then suddenly and remarkably confirmed that the outcome of her meeting with Mr. King was an agreement with Mr. King that Mrs. French was to be fired for fraud but in return for her cooperation to assist Mrs. Badillo and Mr. King that no

action was to be taken against her provided she signed the prepared statement which Ms. Woods described as "words put into my mouth."

30) Ms. Woods stated that she had now been put into Mrs. French's position of "intake" and would keep her job.

31) Then Ms. Woods added, "Unless of course they fire me too." I was stunned and astonished that my wife was a victim of a secret agreement to fire her for Renee' Woods' lack of performance and I said so.

32) Next, I stated to her that by coming to me with this information that she seemed to want to help Mrs. French. Ms. Woods agreed. She stated that was why she had come to the house today to help Mrs. French and stated that she would be willing to make a statement and to talk to Sunny's (Mrs. French) lawyer or do whatever else needs to be done that would help Sunny at this time. Ms. Woods further

stated that she was to visit her doctor the next day or so and left soon thereafter. Renee' Woods called me, but only came back once more.

33) [Deleted]

34) When asked when she had gotten promoted, she answered that she had been promoted into Mrs. French's position when she was fired then demoted from it. Ms. Woods said I could keep the copies of all of the documents and stated again that she would be glad to talk with my wife's lawyer or go to court or do whatever she needed to do. She appeared despondent and unhappy.

35) Since that time, I have seen the gag orders of Mr. Ronald L. King on his employees. Renee' Woods has not been to our house since July 7, 1992 nor would she agree to be interviewed as a witness citing Mr. King's gag order.

GIVEN UNDER MY HAND this 15 day of October 1992.

(s) Harry W. French

HARRY W. FRENCH

Colonel, U.S. Army Retired

VIRGINIA: AT LARGE

Subscribed and sworn to before me by Harry W. French, Colonel, U.S. Army Retired this 15 day of October 1992 and acknowledge the above affidavit as being true to the best of his knowledge, recollection and belief.

My commission expires: 8/31/95

(s) Traci L. Pruett

NOTARY PUBLIC

[Excerpts]

Affidavit of Edward N. Resio

I, EDWARD N. RESIO, a panel member of the grievance panel involving Marcia S. French, and employee of Caroline County Social Services Department, do swear to the following to be true to the best of my knowledge and belief:

1. My instinctive impressions of my fellow panel members, Urchie Ellis and Beverly Bowen, at the beginning of the panel proceedings was that they were predisposed in favor of management.

2. After a number of hearings before the panel, my instinctive impression was that Mr. Ellis and Ms. Bowen were predisposed and favored management.

3. At the conclusion of the panel hearings when we had heard the witnesses and evidence, . . . I pointed my fellow panel

members to the evidence and testimony that supported Mrs. French and I set forth my reasons to them.

4. My fellow panel members showed no interest and gave no weight to my arguments. Mr. Ellis began the panel discussions that it would not be a lengthy deliberation. My initial impressions was confirmed that they had already been predisposed and would support management.

7. At the first deliberation, my fellow panel member, Mr. Ellis, said it was obvious Mrs. French had had problems with management before and this was just "the tip of the iceberg." I drew the conclusion that Mr. Ellis felt Mrs. French had always been an unsatisfactory employee.

8. My biggest problem was there was no give and take in the deliberations. There was no discussion of alternative remedies, the

only remedy being as Mr. Ellis described it, that the panel affirm the dismissal.

10. Mrs. Bowen made the statement that "everyone knew" Caroline County Social Services Department was one of the worst Social Services Departments in the State. This is another reason why I felt the panel was predisposed.

13. The most disturbing conclusion my fellow panel members made was that Sarah Madison was never eligible and the they totally disregarded Mrs. Cynthia Whitaker's testimony that she approved eligibility as well as other evidence proving eligibility such as the Medicaid policy and such as the Medicaid Policy Manual excerpt that was made an exhibit by Mrs. French which showed Sarah Madison met a number of exemptions and therefore was eligible.

15. Mr. Ellis was not interested in

compliance matters nor application of the law or rules or regulations at all; in essence, compliance was an issue which Mr. Ellis refused to consider such as the fifteen-day rule. He did not want to hear anything on that issue.

16. Mr. Ellis went out of his way in avoiding the discussion of the facts or the case in depth. He only wanted to affirm management's dismissal.

17. I was shocked to hear that a witness was being harassed by management for her testimony made before the panel and brought to our attention by Mr. Ames and that Mr. Lilly had been so informed of this fact but failed to bring it to our attention. Mr. Ellis on being questioned by me about this matter told us to ignore it as it had nothing to do with our function as a panel. I found this to be shocking. I also have recently learned that

Cynthia Green had called a witness for Mrs. French and told her that the panel hearing was canceled, thereby causing the witness to not show up for Mrs. French.

[Remainder deleted]

Note: The affidavit was subscribed, executed and sworn to before a Virginia Notary Public by panel member Edward N. Resio.

[Excerpts]

(John Ames examination of Renee' Woods on December 3, 1992 before a state panel hearing pages 90-91.)

J.AMES Did she discuss it with you after you wrote it?

R.WOODS Yes, Sir.

J.AMES What did she say to you?

R.WOODS Ms. Badillo was going to tell Mr. King that she found the case in my desk drawer to try to shield me from Mrs. French's retaliation. Or she wasn't really sure how Mrs. French would react, so she was going to tell Mr. King she found the case in my desk drawer.

And I told her that If I turned the case in, then we should say that I turned the case in, and I'll have to read both of them to see it

there are any other differences. That's all I remember discussing with Mrs. Badillo.

J.AMES So you and Mrs. Badillo were going to fabricate a little white lie in order to keep Mrs. French off of you. Isn't that what you're telling us, Ms. Woods?

R.WOODS Yes, sir, I guess I am, Mr. Ames.

[EXCERPTS]

§2.1-114.5:1 CODE OF VIRGINIA

D.4. "Qualifying grievances shall advance to the final step which shall provide for a hearing before an impartial panel, such panel to consist of one member appoint by the grievant, one member appointed by the agency head . . . . In cases of termination . . . , the third panel member shall not be selected in the manner . . . shall be appointed by the Director of the Department of Employee Relations Counselors from the list of administrative hearings officers . . . "

[EXCERPTS]

4) Dismissal

b) Notification of Dismissal

(1) A permanent or restricted employee must be notified in writing 15 calendar days prior to the date of release as to the specific reason for for dismissal and must be advised of his/her right to grieve such action.

c) Documentation - The basis for dismissal must be documented and supported by past performance evaluations and application of the standards of conduct when the dismissal is based on a performance, conduct or an

adaptability problem. Accurate detailed justification and documentation must accompany any removal. Such documentation shall be retained by the local department of welfare/social services as part of the inactive employee file.

VIRGINIA: IN THE CIRCUIT COURT OF CAROLINE COUNTY

COMMONWEALTH OF VIRGINIA

v.

MARCIA S. FRENCH

ORDER

CAME THE COMMONWEALTH OF VIRGINIA by Special Prosecutor Mark S. Gardner, and Marcia S. French, represented by counsel, each noting that the Special Prosecutor has fully investigated the matters referred to him by the Virginia State Police in regards to whether or not any charges by the Commonwealth should be presented to the Grand Jury against Marcia S. French arising out of her employment with the Caroline County Social Services Department, and noting that the Special Prosecutor has filed his report to the Court and finding insufficient evidence to present any charges on behalf of the Commonwealth to

the Grand Jury against Marcia S. French arising out of her employment with the Caroline County Social Services Department; and accordingly having completed his duty, the Special Prosecutor requests that he be accordingly discharged as Special Prosecutor by this Court; and both the Special Prosecutor and Marcia S. French by counsel request that the file in this cause be permanently sealed by Order of the Court to be not made available to public view or dissemination to the public or any other person or entity except this Order directing the same; and respective counsel presented the order by agreement with their respective endorsements noted for entry by the court.

WHEREFORE, the Court deeming it proper to do so, hereby accepts the Special Prosecutor's report as to its finding of insufficient evidence to present any charges

on behalf of the Commonwealth to the Grand Jury against Marcia S. French arising out of her employment with the Caroline Social Services Department, and the Court hereby ORDERS that the file in this matter be permanently sealed by the Clerk of this Court not to be made available to public view of disseminated to the public in general or to any other person or entity with the exception of this Order directing the same; and further, it being proper to do so, the Special Prosecutor having carried out his duty, he is hereby discharged from acting further as a Special Prosecutor in this matter and this matter accordingly is hereby dismissed from the docket. AND IT IS SO ORDERED.

The Clerk of this Court is to forthwith forward a copy teste of this Order to the Special Prosecutor, the Commonwealth's Attorney for Caroline County, and to counsel

representing the interests of Marcia S. French in these proceedings.

The Clerk is directed that this matter is hereby stricken from the docket and placed among the ended causes.

/s/ J. Peyton Farmer
JUDGE

April 28, 1993
Entered

WE ASK FOR THIS:

/s/ Mark S. Gardner
Mark S. Gardner, Esq.
Special Prosecutor

/s/ John F. Ames
John F. Ames, Esq.
Counsel to Marcia S. French

[Excerpt from Record 4th Cir Appendix 617 from an undated and unsigned typed statement attributed to Renee Woods concerning Mrs. French and purportedly falsely created by Blanche Badillo]

Mrs. French also stated that "the two of us are in big trouble as Mrs. Madison's case should have been closed six months after entering nursing home because of her land". Mrs. French stated she had committed fraud and would probably lose her job for trying to help the family. Mrs. French stated I would probably not be referred for fraud as review had not been completed.

(2) 93-1671

Supreme Court, U.S.
FILED
MAY 23 1994
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

October Term, 1993

Marcia S. French,

Petitioner.

v.

Ronald L. King, et al.,

Respondents.

On Writ of Certiorari
to The United States Court of Appeals
For the Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

John A. Gibney, Jr.
Shuford, Rubin & Gibney, P.C.
P. O. Box 675
Suite 1250, Seven Hundred Building
Richmond, Virginia 23206
(804)648-4442
Attorney for Respondent

Brief Printing Specialist, 1001 E. Main Street, Suite 210
Richmond, Virginia 23219, (804) 644-7000

18 pp

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

Marcia S. French,

Petitioner.

v.

Ronald L. King, et al.,

Respondents.

On Writ of Certiorari
to The United States Court of Appeals
For the Fourth Circuit

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

Questions Presented

The Respondents disagree with the Petitioner's statement of the questions

presented. The questions presented by this petition are as follows:

1. Whether the District Court allowed sufficient discovery to address the issues raised in the motion for summary judgment?

2. Whether the courts below correctly held that the Respondents were protected by the doctrine of qualified immunity?

3. Whether the courts below correctly held that the Petitioner's post-trial motion under Federal Rule of Civil Procedure 60(b) was meritless?

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Harlow v. Fitzgerald, 457 U.S. 800, 816 (1982). 14, 15

Statues

Va. Code § 2.1-114.5:1 7

Summary of Argument

This case presents no issue meriting review by this Court. The case below presented an archetypal discharge case involving a public employee. As relevant to this appeal, the Petitioner contended that her due process rights were violated by the lack of an adequate post-termination hearing.

During the litigation of the case in the District Court, the Petitioner conducted written discovery and took over eight hundred pages of depositions. The record established conclusively that she had taken advantage of the Virginia Grievance Procedure for public employees, which consists of various informal meetings, followed by a quasi-judicial hearing before a three-member panel. The

chairman of the panel is a lawyer appointed from a list maintained by the Supreme Court of Virginia. At this hearing, the employer and employee, both represented by counsel, can present witnesses and documentary evidence on the propriety of the termination.

With these facts clearly established, the lower courts correctly held that the plaintiff's due process rights had been satisfied.

The courts have upheld Virginia's grievance procedure for over a decade. In light of this judicial history, the lower courts also correctly held that the Respondents were protected by qualified immunity because they allowed the Petitioner to take the steps outlined under the grievance procedure.

After the District Court's initial

decision, the Petitioner attempted to reargue the case and added many citations from the discovery in support of her post-judgment motions. She provided no explanation for the delay in her new submissions. Further, her new filings did not even address the facts girding the District Court's decision. Accordingly, the courts below properly held that the post-trial motions afforded no basis for relief.

Statement of Case

In this case, the Petitioner contests her termination from her employment because of misconduct. Although her employer provided her a lengthy hearing before an unbiased grievance panel, and although that panel upheld her termination, she has consistently claimed that her constitutional right to due

process has been violated.

The courts below ruled against the Petitioner on two grounds. First, they held that the Respondents had provided the Petitioner with adequate procedural protection. Second, they held that the Respondents were protected by qualified immunity. The Petitioner, however, has only raised issues challenging the District Court's ruling on qualified immunity.

The Petitioner filed suit in September, 1992. The Respondents filed a motion for summary judgment in October, 1992, accompanied by an affidavit. In November, 1992, the Petitioner began the process of deposing a great many witnesses. She took over eight hundred pages of depositions. She secured hundreds of pages of documents from the

BEST AV

Respondents.[1]

In December, 1992, the Respondents renewed their motion for summary judgment. On January 15, 1993, the District Court granted the Respondents' motion.

Notwithstanding the voluminous discovery in the case, the Petitioner produced little evidence in response to the Respondents' summary judgment motion. Only after the court's decision did the Petitioner first refer to the depositions she had taken. Her motion to alter, amend, or vacate the judgment, and her motion to reopen the case because of "newly discovered" evidence, quote extensively from the discovery, and run hundreds of pages in length.

Although the record ultimately proved

---

[1]Defendants' "Reply to Motion to Alter, Amend, or Vacate Thi
t's Order Granting Summary Judgment," February 2, 1993, p.2.

AILABLE COPY

lengthy, the pertinent facts are undisputed.

a. Termination Procedures

The Petitioner is a former employee of the Caroline County, Virginia, Board of Social Services. She was terminated for misconduct.

Before her termination, she met with her supervisor and then with the Board of Social Services--the governing body of the Department. The Petitioner spoke to the Board and explained her position. Her supervisor recommended her dismissal, and the Board voted to discharge her. The supervisor met with her two days later and advised her of the decision. App. 32.

The Petitioner then filed a grievance under the Virginia State Grievance procedure. The Respondents followed all the steps in the grievance procedure.

App. 42. The stages consist of meetings with management, followed by a hearing before a panel consisting of a member appointed by the employee, a member appointed by management, and a presiding member appointed by the Director of the Department of Employee Relations Counselors. Va. Code § 2.1-114.5:1. She did not prevail in the grievance procedure.

b. Evidence Offered in Post-Judgment Motions

After the District Court granted the Respondents' motion for summary judgment, the Petitioner unleashed a torrent of pleadings citing deposition excerpts and other documentary evidence. Nearly all this evidence had been available to her all along. She never explained why she withheld it.

Copious as her post-judgment filings were, they added little to her prior documentation. She contended over and over that she did not receive a fair hearing and that she was innocent of any wrong-doing. As the District Court noted, her pleadings rehash her theories "ad nauseam." App. 22.

The only new information in post-trial motions is the disclosure that she lost the grievance procedure. The panel member she selected said by affidavit that he had an "instinctive impression" that the other panelists were somehow unfair. App. 22.

Argument

The case was ripe for summary judgment when the district court ruled. The Respondents had filed two summary judgment motions, supported by affidavits.

The Petitioner had responded with counter-affidavits. Although the parties disagreed over the significance of much of the evidence, they did not dispute material facts that might affect the outcome of the motion. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Due Process

The Petitioner conveniently ignores the rulings of both lowe courts that the Respondents had afforded her "all the process she was due." App. 12. In the petition, she presents questions and arguments relating to the issue of qualified immunity. Thus, this Court could find error in the lower courts' decisions on qualified immunity, and still have to affirm the judgment because of the unchallenged judgment that the Respondents

did no wrong.

And this judgment is clearly correct. The Respondents provided the Petitioner with adequate pre- and post-termination procedural safeguards.

a. Pre-termination Meeting.

The Constitution requires little procedural protection before terminating an employee who has a civil service grievance procedure to pursue later. A chance to meet briefly with supervisors suffices, so that an error can be prevented. Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). This Court has held that a quick review of the events leading to termination will meet the Loudermill test. Dennison v. County of Frederick, 921 F. 2d 50 (4th Cir. 1990), cert. denied 111 S. Ct. 2828. The opportunity to confer, whether or not

taken by the employee, meets the standard. Buschi v. Kirven, 775 F. 2d 1240 (4th Cir. 1985).

If the employee learns the reasons for the proposed action and an opportunity to explain her side, due process has been satisfied. Crocker v. Fluvanna Cty. Bd. of Public Welfare, 859 F. 2d 14 (4th Cir. 1988). The purpose of the meeting is to allow the employee to urge the employer to invoke his discretion and to help prevent mistakes in the termination process. Id.

Here, the Petitioner had sufficient pre-termination procedural safeguards. She had three pre-termination meetings. First, she met her supervisor to review the allegations of wrong-doing. Then, she met with the Board and explained her position again. Finally, she met with the supervisor again on the day of her

termination. Each of these meetings standing alone meets the purpose of Loudermill and its progeny: she told her side of the events in question. That she was unsuccessful in persuading her employer does not create a constitutional violation.

b. Post-termination Proceedings.

By the same token, the state grievance procedure satisfies the need for a hearing after termination. The flexible requirements of due process do not mandate a complete trial-type hearing. Rather, notice and an opportunity to be heard are the essence of the constitutional safeguards, and the courts have held time after time that the state grievance procedure meets those requirements. E.g. Detweiler v. Comm. of Va. Dept. of Rehab. Services, 705 F. 2d 557 (4th Cir. 1983).

Indeed, Detweiler recognizes that the grievance procedure satisfies due process even though it lacks many of the litigation tools, such as compulsory process and judicial review, of a court trial.

The record shows that the Petitioner pursued the grievance procedure through its final step--a quasi-judicial hearing before a three-member panel. Given these facts, her due process claim must fail.

Qualified Immunity

The Petitioner contends that she did not have adequate opportunity to conduct discovery on the issues raised by the Respondents' claim of qualified immunity. She says that there is confusion among the circuits as to proper amount of discovery.

Although the courts have allowed

varying amounts of discovery in order to address qualified immunity motions, this case does not raise any issue that would elucidate whatever confusion may exist about discovery. As noted above, the Petitioner took over eight hundred pages of depositions, and conducted written discovery as well. The issue--whether she received the mandated termination hearings--was adequately explored in those hearings. Even the most ardent advocate of full discovery in qualified immunity cases would be hard pressed to suggest that in this context more discovery is needed. Indeed, the time spent on this case is exactly the sort of burden the qualified immunity defense is supposed to prevent. Harlow v. Fitzgerald, 457 U.S. 800, 816 (1982).

The Petitioner also contends that

this case raises issues about the "clearly established" doctrine in qualified immunity cases. A defendant enjoys such immunity so long as his "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Anderson v. Creighton, 483 U.S. 635, 641 (1987).

Whatever ambiguity may exist about what is a "clearly established" rule of law, it does not apply to this case. The Respondents complied with the unquestionably then-current law--they followed the grievance procedure. Dennison v. County of Frederick, 921 F. 2d 50 (4th Cir. 1990); Crocker v. Fluvanna Cty. Bd. of Public Welfare, 859 F. 2d 14 (4th Cir. 1988). At the time of the

District Court's decision, the Fourth Circuit Court of Appeals had upheld the grievance procedure for nine years. App. 42. No case had held that any aspect of the grievance procedure was unconstitutional. Rather, the cases specifically declare that the grievance procedure satisfies the requirements of due process. Thus, the Respondents were entitled to the defense of qualified immunity: they did not violate any clearly established federal law of which reasonable people in their positions would know.

Rule 60(b) Motion

Whether to grant a motion under Rule 60(b) lies within the trial court's sound discretion. Aliff v. Joy Manufacturing Corp., 914 F. 2d 39, 44 (4th Cir. 1990). Here, the court properly exercised its

discretion, and denied the motion to reopen the case based on newly discovered evidence. The only new evidence the plaintiff offered was an affidavit from her panel member. The panel member said that he had an "instinctive impression" that his fellow panelists were unfair. App. 13-14, 22. She offered no explanation as to why she did not produce the evidence earlier. App. 14. Further, the affidavit did not suggest that the original decision of the court was wrong. The District Court properly exercised its discretion to deny the motion, which amounted to little more than an attempt to relitigate the entire case.

Conclusion

This case does not present a close question, and offers the Court no oppotunity to explain any unclear premises

of law. For the reasons stated, the Respondents respectfully request the Court to deny the Petition for a Writ of Certiorari.

Ronald L. King, et al.

By: John A. Gibney, Jr.

Counsel

John A. Gibney, Jr.
Shuford, Rubin & Gibney, P.C.
P. O. Box 675
Suite 1250 Seven Hundred Building
Richmond, Virginia 23206
(804)648-4442